

5-14-2010

Printcraft Press v. Sunnyside Park Utilities Clerk's Record v. 20 Dckt. 36556

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Vol. 20 & 27

LAW CLERK

IN THE

Supplemental volume 8 of 10

SUPREME COURT

OF THE

STATE OF IDAHO

PRINTCRAFT PRESS, INC.

Plaintiff _____ and

Respondent/Cross Appellant

SUNNYSIDE PARK UTILITIES, INC., et al

Defendant _____ and

Appellant/Cross Respondent

Appealed from the District Court of the Seventh _____ Judicial

District of the State of Idaho, in and for Bonneville _____ County

Hon. Joel E. Tingey _____, District Judge

Mark Fuller _____ P.O. Box 50935, Idaho Falls, ID 83405

Bryan Smith _____ P.O. Box 50731, Idaho Falls, ID 83405

Attorney's for Appellant-Cross Respondents

Michael Gaffney _____ 2105 Coronado, Idaho Falls, ID 83404-7495

FILED - COPY

Attorney for Respondent-Cross Appellant

Filed this _____ day of MAY 14 2010 _____, 20____

Clerk

Deputy

36556

36567

COPY

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2009 FEB -4 PM 6: 22

CIS
MAGISTRATE DIVISION
BONNEVILLE COUNTY

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

AFFIDAVIT OF JOHN M. AVONDET

STATE OF IDAHO

County of Bonneville

ss.

John M. Avondet, having been duly sworn on oath, deposes and states:

S- 313

S-1131

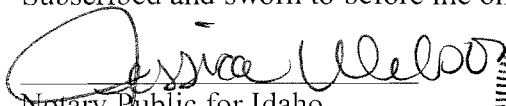
1. I am an attorney with the law firm Beard St. Clair Gaffney PA, counsel for the plaintiffs in the above entitled action.
2. I am competent to testify and do so from personal knowledge.
3. Attached as Exhibit A is a true and correct copy of excerpts of the deposition of Kirby Olson taken April 30, 2008.
4. Attached as Exhibit B is a true and correct copy of an excerpt of Exhibit 13 to the deposition of Printcraft Press Inc. taken April 25, 2007, a letter from Michael Lund to Sunnyside Utilities Inc dated August 28, 2006, Bates No. 00058.
5. Attached as Exhibit C is a true and correct copy of Defendant's Response to Plaintiff's First Set of Interrogatories, Requests for Admission and Requests for Production dated May 21, 2007.
6. Attached as Exhibit D is a true and correct copy of Defendants' Third Supplemental Expert Witness Disclosure dated December 15, 2008.
7. Attached as Exhibit E is a true and correct copy of excerpts of the deposition transcript of Doyle Beck taken May 30, 2007.
8. Attached as Exhibit F is a true and correct copy of excerpts of the deposition of Lance Schuster taken January 16, 2009.
9. Attached as Exhibit G is a true and correct copy of excerpts of the deposition of Michael Lund taken May 30, 2008.
10. Attached as Exhibit H is a true and correct copy of the Defendant's Sunnyside Park Utilities, Inc.'s Response to Plaintiff's Fourth Set of Requests for Production dated June 2, 2008.

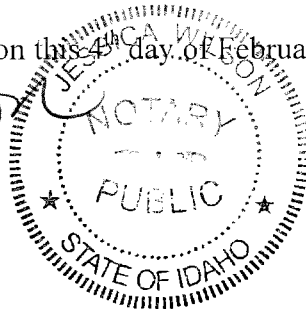
51132

DATED: February 4, 2009


John M. Avondet

Subscribed and sworn to before me on this 4th day of February, 2009.


Notary Public for Idaho
Residing at: Idaho Falls, ID
My Commission Expires: 9/11/2014



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on February 4, 2009, I served a true and correct copy of the AFFIDAVIT OF JOHN M. AVONDET on the following by the method of delivery designated below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: (208) 524-7167

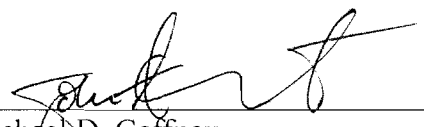
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Attorneys for Plaintiff

S 1133

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DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO

COPY

PRINCRAFT PRESS, INC.,
an Idaho corporation,
Plaintiff/Counterdefendant,
vs. Case No.: CV-06-7097
SUNNYSIDE UTILITIES, INC., an
Idaho corporation, SUNNYSIDE
PARK OWNERS ASSOCIATION, INC.,
an Idaho corporation, and
SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC, an
Idaho limited liability company,
Defendants/Counterclaimants.

DEPOSITION OF KIRBY S. OLSON

April 30, 2008

9:05 a.m.

Bean & Associates, Inc.
119 E. Marcy, Suite 110
Santa Fe, New Mexico 87501

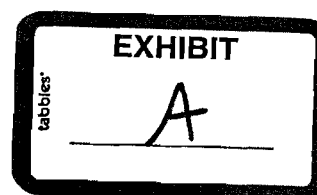
PURSUANT TO THE IDAHO RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MR. LANCE J. SCHUSTER
Attorney for the
Plaintiff/Counterdefendant

REPORTED BY: Jan A. Williams, RPR, CCR 14
Bean & Associates, Inc.
Professional Court Reporting Service
500 Marquette, Northwest, Suite 280
Albuquerque, New Mexico 87102
(6818A) JAW

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1 A. Yes.

2 Q. Exhibit No. 3?

3 A. Exhibit No. 3 is a semi-qualitative screening
4 level risk assessment.

5 Q. What do you mean by semi-qualitative?

6 A. In looking at this material, I had
7 information -- quantitative information, numbers on
8 toxicity of chemicals to bacteria. But I did not have
9 quantitative information on the concentrations they
10 may have been exposed to at this site. Therefore,
11 it's a semi-qualitative analysis.

12 Q. So you didn't have any data about what
13 chemicals went into this septic system at this site?

14 A. I had data on the chemicals from the MSDS. I
15 did not have data on the concentration of the
16 chemicals that went in.

17 Q. Okay. So you operated on the assumption that
18 all of these chemicals went into the septic system?

19 MR. FULLER: Object to the form. As to what
20 chemicals?

21 BY MR. SCHUSTER:

22 Q. Let me ask that question a little bit better
23 I hope.

24 The last two pages of Deposition Exhibit No.
25 3 contain a list of various chemicals or compounds.

1 concentrations were zero on any of these chemicals?

2 A. I'd have no idea what the concentrations
3 would have been on hospital chemicals.

4 Q. I'm trying to understand the range. I guess
5 they could have been anywhere from zero to 100 percent
6 on the concentrations?

7 MR. FULLER: Object to the form.

8 BY MR. SCHUSTER:

9 Q. Is that a bad question? I'm not sure if you
10 understand my question. Do you understand what I'm
11 asking?

12 A. No.

13 Q. So let's just pick a chemical on here, for
14 example, copper.

15 A. Okay.

16 Q. The chemical could have been 100 percent
17 copper being poured down the drain into this septic
18 system, you don't have any data as to what the
19 concentration of copper was?

20 A. I have no data as to what the concentration
21 of copper in the tank was.

22 Q. Or it could have been zero percent, you don't
23 know whether there was no copper in the system?

24 A. That's correct.

25 Q. Okay. All right. I think I understand your

Page 19

Page 21

1 Do you see that list?

2 A. Yes.

3 Q. Are these the MSDS compounds you received
4 from Mr. Fuller?

5 A. Yes.

6 Q. And your evaluation was based upon the
7 toxicity of these chemicals to bacteria in a septic
8 system?

9 A. Yes.

10 Q. All right. I think I understand. But what
11 you're saying is you don't know what the
12 concentrations were of these chemicals in the
13 Sunnyside Industrial Park septic system?

14 A. Yes.

15 Q. You didn't have any data in formulating your
16 report?

17 A. Not on the concentrations that went into the
18 tank.

19 Q. And if you had no data, I guess the
20 concentrations could have been as low as zero,
21 nothing?

22 MR. FULLER: Object as to form.

23 BY MR. SCHUSTER:

24 Q. I mean if you don't know what the
25 concentrations were, you don't know if the

1 testimony then. You said that your report, Exhibit
2 No. 3, is a semi-qualitative risk assessment. What
3 would have been required to do a quantitative risk
4 assessment?

5 A. In a quantitative screening level risk
6 assessment, I would have toxicity information such as
7 the kind I have here. I would also have
8 concentrations to which whatever organism I was
9 evaluating, bacteria, humans, prairie dogs, was
10 exposed.

11 Q. Okay. And do you have any such data in this
12 case?

13 A. Not in this case.

14 Q. All right. Help me to understand. I think
15 you said this was kind of the first step in a
16 screening process or something like that?

17 MR. FULLER: I would object to the form.

18 BY MR. SCHUSTER:

19 Q. I probably didn't get your testimony quite
20 right. But I guess what I want to understand is how
21 this kind of a risk assessment would be used by an
22 ecological risk assessor like yourself?

23 A. A screening level risk assessment is
24 generally done against toxicity data from the
25 literature to determine if there's a potential for

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1 there to be harm or effects to whatever organism
2 you're studying.

3 **Q. So this is just kind of the first step in a
4 screening, is that a fair characterization?**

5 A. No. This is an entire screening. A
6 screening can be followed by other steps.

7 **Q. Okay. But what would those other steps be?**

8 A. There's generally one of two approaches that
9 are taken. Either what is called a baseline risk
10 assessment, where we would look for much more specific
11 information and do additional calculations to refine
12 our estimates of the potential for harm.

13 The other approach would be to go directly to
14 field analyses, such as -- if I can use an example
15 from something else. If I was looking for potential
16 harm to mice. Field studies would involve looking at
17 populations of mice, perhaps catching some of the mice
18 to see if they were sick or contaminated.

19 **Q. Okay. So did you do a baseline study or a
20 field analysis in this case?**

21 A. No.

22 **Q. The only thing that was done was this
23 semi-qualitative risk assessment?**

24 A. Yes.

25 **Q. All right. Back to Exhibit No. 3 then. Does**

Page 23

1 **this document contain all of your opinions?**

2 MR. FULLER: I would object as to form. My
3 objection is as to what topic. Opinions as to the
4 time of day, as to the weather.

5 BY MR. SCHUSTER:

6 **Q. Well, go ahead and answer. If you don't
7 understand my question, go ahead and tell me.**

8 A. Okay. I don't understand your question.

9 **Q. What I want to understand is if this report
10 contains all of your opinions in this case.**

11 A. Yes.

12 **Q. You produced this opinion?**

13 A. Yes, I did.

14 **Q. And I guess the premise of your report here
15 is that just like the title says, certain bacteria --
16 or excuse me. Certain chemicals can be harmful to the
17 bacteria in the septic tank?**

18 A. Yes.

19 **Q. And what is your understanding of the problem
20 with bacteria in the septic tank being harmed or
21 killed?**

22 A. The bacteria are the only really functional
23 element in the septic tank. They keep the sludge from
24 building up and eventually overflowing the tank. So
25 if the bacteria disappear, then all the biological

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1 filtration that occurs within a septic tank system
2 would disappear.

3 **Q. Okay. Can those bacteria be replenished?**

4 A. Yes, they can.

5 **Q. How would they be replenished?**

6 A. Actually new bacteria would come in with each
7 input of fecal matter.

8 **Q. So if a septic system is constantly being
9 used day in and day out, there's a constant supply of
10 new bacteria?**

11 A. Yes.

12 **Q. And let's suppose you kill all the bacteria
13 in a septic system and the very next day you have new
14 fecal material coming into the system. You would
15 thereby replenish the bacteria in the system?**

16 A. Probably not on that time scale. I think it
17 would take longer for the colonies to build up in the
18 sludge later and develop and multiply to a high enough
19 level.

20 **Q. Do you know how long that would take?**

21 A. I don't.

22 **Q. Let me just walk through this report marked
23 as Exhibit No. 3 with you. And I've just got some
24 questions that I want your help in understanding. In
25 the first paragraph, and I'll just refer to these as**

Page 25

1 **pages 1, 2, 3, and 4, 3 and 4 being the chart.**

2 A. Okay.

3 **Q. So in the first paragraph, first full
4 paragraph on page 1 of Exhibit No. 3, you indicate
5 "Toxicity values specifically for anaerobic bacteria
6 for a large number of chemicals are not available."
7 What do you mean by that?**

8 A. I initially searched for toxicity information
9 that was specific to the type of anaerobic bacteria
10 that function in septic tanks. There's not much of
11 that data available.

12 **Q. All right.**

13 A. So I searched for toxicity data on other
14 microbes that would be representative of this group of
15 organisms.

16 **Q. All right. And then if I flip to pages 3 and
17 4 of your report which list the various MSDS
18 compounds, I note under the column Toxicity to
19 Microorganisms, that in a number of instances you have
20 written "no tox data for microbes"? 51136**

21 A. Yes.

22 **Q. So does that mean that there was none or you
23 didn't find any toxicological -- did I say that
24 right -- or toxicity data for microbes?**

25 A. Yes. That phrase indicates chemicals for

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1 which I was not able to find this type of toxicity
2 data.

3 Q. And by microorganisms, you mean bacteria?

4 A. Bacteria or green algae or blue-green algae.

5 Q. So in all of those instances where you put no
6 tox data for microbes, you just don't know what the
7 toxicity of these chemicals is to microbes?

8 A. That's correct.

9 Q. All right. Let's go back to page 1 of
10 Exhibit 3. Just below that last sentence, you
11 indicate "The tank portion functions primarily on
12 digestion of organic matter by various species of
13 anaerobic bacteria." Can you just clarify the
14 difference between aerobic and anaerobic bacteria for
15 me?

16 A. Yes, anaerobic bacteria are bacteria that
17 prefer to live in an environment that has low oxygen
18 such as inside the sludge layer. Aerobic bacteria
19 have different metabolic processes and function in
20 environments with high oxygen.

21 Q. And I know you've testified that bacteria
22 helped to break down the sludge. Can you help me to
23 understand how that process works?

24 A. The bacteria actually digest some of the
25 organic matter which is within the sludge. By doing

1 removed from the Sunnyside Industrial Park septic
2 system?

3 A. I do not.

4 Q. All right. The next sentence in your report
5 indicates "The leachfield portion further processes
6 waste using aerobic bacteria and algae that form a
7 'slime mat' around the tubing in the leachfield." Can
8 you explain to me how that works?

9 A. As the liquid that leaves the septic tank
10 enters the leachfield, the microorganisms mentioned
11 here exist in the soil right around the leachfield.
12 As that liquid passes by them, they would remove some
13 additional compounds from it. An example would be
14 nitrate.

15 Q. Nitrates would be removed in the leachfield?

16 A. Yes, to some extent.

17 Q. All right. Do you have any data about the
18 leachfield in the Sunnyside Industrial Park septic
19 system?

20 A. No.

21 Q. And you didn't have any data in forming your
22 opinions about what was happening in the Sunnyside
23 Industrial Park's septic system?

24 MR. FULLER: Object to the form of the
25 question. Data as to what, Counsel?

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1 so, that reduces the volume of the sludge over time.

2 Q. All right. And that bacteria I think you
3 indicated is constantly being replenished by new waste
4 material going into the system?

5 A. Yes.

6 Q. You also indicate in that same sentence that
7 "The sludge in the tank also contains fungi and
8 protozoans." What is the role of fungi and protozoans
9 in the septic system?

10 A. Those organisms don't have an actual
11 functional role like the anaerobic bacteria, but they
12 are also present in the system. There are a large
13 number of types of microorganisms inside a septic
14 tank.

15 Q. All right. So basically we have anaerobic
16 bacteria that is helping to break down or reduce the
17 sludge?

18 A. Yes.

19 Q. Now, my understanding of a septic system is
20 that even with that being the case, you still have to
21 pump the sludge out of the septic tank on a periodic
22 basis. Is that your understanding also?

23 A. My understanding is that's recommended, that
24 the sludge be removed on a periodic basis.

25 Q. Do you have any data as to whether sludge was

1 BY MR. SCHUSTER:

2 Q. Well, maybe I can ask it a little bit better.

3 You didn't have any information about the
4 functioning of the leachfield in the Sunnyside
5 Industrial Park's septic system?

6 A. No, I did not.

7 Q. In the next sentence, you indicate

8 "Therefore, organisms that are considered indicative
9 of potential toxicity to aquatic microorganisms in
10 general are appropriate to the assessment of toxicity
11 to septic system microorganisms." What do you mean by
12 that sentence?

13 A. That means that although toxicity data
14 specific to anaerobic bacteria were not available,
15 there is standardized toxicity data for other aquatic
16 microorganisms. Those organisms can serve as
17 indicators of the toxicity in this particular system.

18 Q. And if I look again at pages 3 and 4 of
19 Exhibit 3 and I look at the MSDS compounds, I see in
20 many instances where you do have toxicity data that
21 you have listed green algae or blue-green algae. Are
22 those the microorganisms that you consider indicative

23 of potential toxicity?

24 A. Yes.

25 Q. So I'm trying to think back to my high school

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1 Q. And I would presume that the LC50 values
2 would be higher than the EC50 values in most
3 instances?

4 A. I wouldn't concur with that, because an EC50
5 can also be measuring lethality.

6 Q. I guess I'm just trying to understand. As
7 you increase the concentration, at some point there's
8 an adverse effect. And then as you further increase
9 the concentration, at some point whatever organisms
10 you're talking about start to die?

11 A. Yes.

12 Q. That's generally how that scale works?

13 A. Yes.

14 Q. As you increase the concentration, it becomes
15 more toxic?

16 A. Yes.

17 Q. All right. I think I understand. So then
18 back to that first full paragraph of your report. You
19 indicate that "Toxicity values for green algae and
20 blue-green algae from the ECOTOX database were used in
21 this assessment." And I think we already talked about
22 that.

23 Let's go down to the next paragraph on page 1
24 of your report which is Exhibit 3. In the first
25 sentence, you say "There is no single standardized

1 Q. You don't have any opinions as to whether
2 they were toxic or not?

3 A. Since I have no information on the
4 concentrations, I can't draw any conclusions on those
5 levels.

6 Q. Do you have any data as to what chemicals
7 were discharged by my client, Printcraft Press, and
8 what was discharged by other businesses in the
9 Sunnyside Industrial Park?

10 A. The only information I have on what chemicals
11 were discharged is what I took out of the MSDSs.

12 Q. So back to that first sentence about "There
13 is no single standardized value that divides toxic
14 from nontoxic." I guess what you're saying then, if I
15 understand your testimony, is that the value differs
16 depending on the chemical; is that right?

17 A. The value -- what that statement means is
18 that I have a range of standardized values for
19 toxicity. But there is no one value that could be
20 applied to all organisms that says when this value is
21 below this, it's toxic; and when this value is above
22 this, it's not.

23 There's no one value that can be applied to
24 all living things. So I have to go and look for a
25 value that is appropriate for the organism I'm

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1 value that divides toxic from nontoxic." Can you
2 explain for me what that means?

3 A. When I assembled the toxicity data, you get a
4 set of numeric values. Then you need to evaluate
5 whether those represent a material that is toxic or a
6 material that has very low toxicity. There was no one
7 single standard value everywhere that would
8 necessarily be considered this is toxic, this isn't
9 toxic.

10 Because I have no concentrations within the
11 septic system to compare these values I've assembled
12 to, I have to find a value for what would be
13 considered toxic to microorganisms to compare these
14 values to.

15 Q. Okay. So the concentrations of these
16 chemicals in the Sunnyside Industrial Park septic
17 system are not known, you don't have any data?

18 A. I don't have any data on that.

19 Q. Do you know whether any of the concentrations
20 of chemicals in the Sunnyside Industrial Park septic
21 system were toxic?

22 A. I do not know the concentrations within the
23 septic system.

24 Q. So you don't know whether they were toxic?

25 A. That's correct.

1 evaluating the toxicity data for.

2 Q. So you can't just pick a magic number, 1,000
3 milligrams per liter, for example, and say it doesn't
4 matter what chemical you're using, that's toxic?

5 A. That's correct, because it would depend on
6 what the organism being impacted was.

7 Q. And it would depend on the chemical?

8 A. The standardized toxicity values are what
9 depend on the chemical. The evaluation of whether
10 this standardized toxicity value represents something
11 toxic or not is more connected with the type of
12 organism you're evaluating.

13 For example, an LC50 of ten for a mouse may
14 represent toxic, whereas an LC50 of ten for a plant
15 may not be the criteria that's used to separate things
16 that are toxic from nontoxic. You have to find that
17 benchmark between toxic and nontoxic for the
18 particular type of organism you're evaluating.

19 Q. Okay. I think I understand. The next
20 sentence in the next full paragraph, "The
21 concentrations inside a septic system are not known;
22 they depend on the product put into the lines, the
23 surrounding flow during the discharge, and whether the
24 product passes through the system quickly or
25 partitions into the sludge and remains in the septic

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Page 44

1 tank."

2 And again if I understand your testimony, you

3 don't know what the concentrations were in the

4 Sunnyside Industrial Park septic system?

5 A. That's correct.

6 Q. And you don't know whether any of the

7 chemicals on pages 3 and 4 passed through the system

8 quickly or partitioned into the sludge and remained in

9 the septic tank?

10 A. That's correct.

11 Q. And I guess that really kind of leads into

12 your next sentence, "Therefore, this is a

13 semi-qualitative risk assessment." And that's what we

14 talked about before, where if it was quantitative,

15 that would mean you would have some data to work with?

16 A. Yes, for a quantitative one, I would have

17 some data on the concentrations the bacteria were

18 exposed to in addition to the concentrations that can

19 be toxic to them.

20 Q. And a qualitative risk assessment means

21 you're just dealing with hypotheticals I guess?

22 MR. FULLER: Object to form.

23 BY MR. SCHUSTER:

24 Q. What might happen? Go ahead and answer.

25 A. In a semi-qualitative risk assessment, I'm

1 you see in that column is below 100, then I considered

2 it to be toxic. An example -- it said the EC50 on it.

3 An example would be the second entry for ethanolamine

4 on page 3.

5 Q. Let me find that.

6 A. Sure. It's the line extender.

7 Q. Ethanolamine. Okay.

8 A. The second entry, it has an EC50 for green

9 algae which is at 70. Because that's lower than 100,

10 that's one of the ones that I would have put in ranked

11 as toxic. The actual division into toxic and nontoxic

12 is not presented on this chart.

13 Q. I see.

14 A. And a correlating example, the isopropyl

15 alcohol has an LC50 greater than 1,000. So I would

16 have considered it not toxic.

17 Q. Is isopropyl alcohol on page 3?

18 A. It is on page 3, it's the IPA.

19 Q. IPA. So you considered that nontoxic?

20 A. Because that value exceeds 100 milligrams per

21 liter.

22 Q. So is there any easy way for a layman like me

23 to look at this chart on pages 3 and 4 and understand

24 which chemicals you considered toxic and which ones

25 you considered nontoxic?

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1 assessing the potential for toxicity based on the

2 information I do have.

3 Q. What could happen?

4 A. Yes.

5 Q. All right. The next sentence, "As an initial

6 criterion, an LC50/EC50 of 100 milligrams a liter was

7 used to divide the hazardous chemicals on the MSDSs

8 into potentially toxic and nontoxic." So was that the

9 dividing line you used for bacteria between toxic and

10 nontoxic?

11 A. Yes, it is.

12 Q. So if I look at pages 3 and 4, there's a

13 column that says bac tox on MSDS. Is that the

14 dividing line between that 100 milligram per liter

15 mark?

16 A. No. That column indicates whether or not I

17 found any information on the MSDS itself as to whether

18 it was toxic to bacteria.

19 Q. Okay.

20 A. It's ancillary information.

21 Q. So looking at your chart on pages 3 and 4 of

22 Exhibit 3, how do I tell whether you listed these

23 chemicals as potentially toxic or nontoxic?

24 A. That's not indicated on the chart. The chart

25 gives you the standardized tox value. If the value

1 A. Yes. Any ones in that column of value where

2 the value is less than 100 milligrams per liter I

3 ranked as toxic. Any ones where the value you see in

4 that column exceeds 100 milligrams per liter were

5 ranked as nontoxic provided that the tox endpoint

6 volume also said EC50.

7 Q. And then what about the ones that are blank?

8 MR. FULLER: Object as to form. In which

9 column?

10 BY MR. SCHUSTER:

11 Q. I'm sorry. In the value column.

12 A. The ones that are blank are ones for which I

13 was not able to find one of these standardized

14 toxicity values; therefore, it was not evaluated as

15 toxic or nontoxic on that basis.

16 Q. I see. Okay. I think I understand. I think

17 that brings me to the last sentence on page 1 of

18 Exhibit 3. "Products with an LC50/EC50 higher than

19 100 milligrams per liter are considered safe for

20 disposal into any septic tank system." And by that

21 again we're talking about that same

22 toxicity/nontoxicity dividing line that you were

23 talking about previously?

24 A. Yes.

25 Q. And above that you indicate that that

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1 dividing line is based upon the European Union and the
2 OECD, Organization For Economic Cooperation and
3 Development, and GHS, Global Harmonization System, for
4 acute toxicity to algae. Do we have a similar sort of
5 system here in the United States?

6 A. We do not.

7 Q. So you're using those systems as an analogy?

8 A. Yes.

9 Q. So help me to understand that a little bit.

10 The EPA or who, just nobody has come up with a uniform
11 standard for toxicity/nontoxicity to algae here in the
12 United States?

13 A. That's correct.

14 Q. Which agency would come up with that value,
15 the EPA?

16 A. Generally those types of values are developed
17 by the EPA.

18 Q. Do you know whether Idaho has any such
19 values?

20 A. I did not find any such values in doing my
21 research on the appropriate benchmark for comparison
22 to this toxicity data.

23 Q. I want to move on to page 2. But before we
24 do that, maybe this would be a good point to take a
25 quick little break.

1 tank bacteria at Sunnyside Industrial Park's septic
2 system has been harmed?

3 A. I cannot say that based on the information I
4 have.

5 Q. Then in the next sentence, you indicate that
6 "These chemicals include hydroquinone" -- I'm not sure
7 if I'll say these all right. In fact, maybe you could
8 read that for me.

9 A. Sure. "Hydroquinone, sodium metabisulfite,
10 ethanolamine, copper, and zinc."

11 Q. Do you have any data or any information that
12 those chemicals were actually used by Printcraft Press
13 and disposed of into the Sunnyside Industrial Park
14 septic system?

15 A. Those chemicals are listed on the MSDSs.

16 Q. And that's where --

17 A. That's where that information comes from,
18 that they were used in the processes.

19 Q. But you don't have any data that those
20 chemicals actually went into the septic system or what
21 concentrations either?

22 A. I have no data on what chemicals and
23 concentrations were within the septic system itself.

24 Q. All right. In the next sentence, you write
25 "Even if these chemicals are not present in

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1 A. Okay.

2 (Recess.)

3 MR. SCHUSTER: All right. Let's go back on
4 the record.

5 BY MR. SCHUSTER:

6 Q. Kirby, if you'll turn with me to page 2 of
7 Exhibit 3, I have some questions about the information
8 on page 2. You indicate at the top of page 2 of your
9 report that "Several of the chemicals present in the
10 products used by Printcraft could have potentially
11 harmful effects on septic tank bacteria." Do you see
12 where I'm looking?

13 A. Yes.

14 Q. Do you know whether that has occurred?

15 A. I do not know whether that has occurred.

16 Q. Do you have any opinion on whether that has
17 occurred?

18 A. My opinion would be on the potential for it
19 to occur. That's what a screening level risk
20 assessment does, it does not -- it assesses the
21 potential for harm, not whether or not it has actually
22 occurred.

23 Q. Okay. So I think I know the answer to this
24 question. But just to make sure I understand, can you
25 say on a more probable than not basis that the septic

1 concentrations sufficient to kill off" -- should that
2 say off, the next word?

3 A. Yes.

4 Q. "Sufficient to kill off microorganisms in the
5 septic tank, they could reduce the bacterial
6 population or interfere with their metabolism,
7 preventing the bacteria from efficiently digesting the
8 solids." Do you have an opinion as to whether that
9 has occurred?

10 A. I do not.

11 Q. Can you say on a more probable than not basis
12 that the bacterial population has been reduced in the
13 Sunnyside Industrial Park's septic system?

14 A. No.

15 Q. The next sentence, "In addition, some of the
16 chemicals (zinc and copper) may accumulate in the tank
17 sludge and bacteria could be exposed to higher
18 concentrations than initially introduced into the
19 tank." What do you mean by that?

20 A. When the zinc and copper are introduced into
21 the septic system, they will -- their general behavior
22 in that kind of environment is to adsorb to the
23 sludge, to the organic matter in the sludge material.

24 In doing so, they become resident in the tank
25 rather than flowing through with the rest of the

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1 liquid. Therefore, every time that copper and zinc
2 are put into the tank, some of that material will
3 adsorb to the sludge and, therefore, the concentration
4 in the sludge will continue to increase over time.

5 Therefore, bacteria living in the sludge can
6 be -- can eventually be exposed to concentrations that
7 may even be higher than the concentrations that are
8 entering the tank.

9 **Q. All right. I'm trying to understand, though.**
10 **If the copper and zinc are accumulating in the sludge,**
11 **wouldn't they be less available to bacteria in the**
12 **tank?**

13 A. Well, the anaerobic bacteria in the tank
14 preferentially occupy the sludge and not the water
15 column, because they prefer the lower oxygen
16 environment in the sludge and also because the sludge
17 is their food. So when the metals adsorb to the
18 sludge, they actually would become more available to
19 the bacteria because they would have essentially
20 entered their food supply.

21 **Q. So you're saying they would be more**
22 **available, not less available?**

23 A. Yes, because the metal would adsorb to the
24 organic matter, then the microbes digest the organic
25 matter.

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1 **Q. Do you know chemically how the zinc and**
2 **copper -- maybe you can explain to me chemically how**
3 **the zinc and copper -- because I'm thinking back to**
4 **high school now. But can you explain to me how the**
5 **zinc and copper would interact chemically with the**
6 **sludge?**

7 A. Actually that's outside my field of
8 expertise. I can tell you that they tend to -- the
9 process is described as adsorption in which they will
10 adhere to the sludge. But I can't give you the actual
11 chemical reactions that occur.

12 **Q. But it's your opinion that the bacteria would**
13 **be exposed in higher concentrations if that**
14 **accumulates in the sludge, the zinc and copper?**

15 A. Yes.

16 **Q. And then I suppose if someone is periodically**
17 **removing the sludge from a septic tank, that zinc and**
18 **copper would also be removed when the sludge is**
19 **removed?**

20 A. I think it would be safe to presume that
21 materials that adsorb to the sludge would be removed
22 when the sludge is removed.

23 **Q. All right. Let's look at the next paragraph**
24 **on page 2 of Exhibit 3. Would you read that paragraph**
25 **for me.**

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1 A. Yes. The paragraph says "The products
2 containing the chemicals above include G101P Developer
3 Working Strength (hydroquinone), G101P Developer Part
4 B (hydroquinone and sodium metabisulfite), the aqua
5 sparkle 872 and 874 gold flexo inks (copper at 26
6 percent and zinc at 11 percent by weight), and the Pro
7 Plus SP Line Extender and Inks (ethanolamine)."

8 **Q. The products you describe in this paragraph**
9 **are listed on pages 3 and 4 of your chart?**

10 A. Yes, they are.

11 **Q. And you indicate that some of the chemicals**
12 **anyway include hydroquinone, sodium metabisulfite,**
13 **copper, zinc, and ethanolamine.**

14 A. Yes.

15 **Q. Do you know whether any of those products**
16 **were actually discharged into the Sunnyside Industrial**
17 **Park septic system?**

18 A. My inclusion of those chemicals was based on
19 their inclusion in the MSDSs that were provided to me.

20 **Q. By Mr. Fuller?**

21 A. By Mr. Fuller.

22 **Q. You would agree with me, would you not, that**
23 **if they were not discharged into the septic system,**
24 **those products, that they would not be harmful to the**
25 **bacteria in the septic system?**

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1 A. Yes.

2 **Q. I know that sounds like kind of an obvious**
3 **question. The next paragraph, would you read that for**
4 **me.**

5 A. The next paragraph says that "A chemical
6 involved in the print processes not listed on the
7 MSDSs is silver. Silver dissolved in water is
8 extremely toxic to bacteria, with an EC50 of 1.2 ppb
9 (0.001 milligrams per liter). Routine discharges of
10 silver in the water to the septic tank could severely
11 impact the microbial populations and processes within
12 the septic system."

13 **Q. Do you know whether silver was discharged**
14 **into the Sunnyside Industrial Park septic system in**
15 **this case?**

16 A. I do not.

17 **Q. And again you don't have any data as to what**
18 **concentrations of silver, if any, were discharged?**

19 A. No, I have no data on that.

20 **Q. Can you tell me where on pages 3 and 4, maybe**
21 **I just missed it, I didn't see where silver is listed**
22 **on pages 3 and 4.**

23 A. Silver is not listed on pages 3 and 4 because
24 it was not on the MSDSs. Silver is listed in the text
25 because it is a common component in many print

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1 processes and film developing.

2 **Q. But it was not listed on any of the MSDSs you**
3 **received from Mr. Fuller?**

4 A. No, it was not.

5 **Q. All right. Let's look at the next paragraph.**
6 **Again would you read that paragraph for me.**

7 A. The next paragraph says "In addition, sodium
8 carbonate is present in the G101P Developer Working
9 Strength and G101P Developer Part B. Both MSDSs for
10 these chemicals note that there may be ecological
11 effects due to shifts in pH from this product. Shifts
12 in pH could also have deleterious effects on processes
13 within the septic tank system."

14 **Q. Help me to understand MSDSs. What is your**
15 **understanding of the purpose of those sheets?**

16 A. MSDSs were developed to advise individuals
17 using products that may contain hazardous chemicals of
18 what the hazardous chemicals in them are and what the
19 hazards could be. The assessments of hazards that
20 appear on MSDSs are based on both the amount of the
21 product they make up greater than 1 percent and their
22 toxicity to humans.

23 **Q. Toxicity to humans, not to bacteria?**

24 A. Toxicity to humans are the basis for MSDSs.
25 They do very often as I noted on my chart include

1 don't have any data for 2006, 2007, 2008, you just
2 don't have any data at all?

3 A. That's correct.

4 **Q. Let's go down to this last paragraph here.**
5 **The title is Consequences to Human Health and the**
6 **Environment. Would you read that first sentence for**
7 **me.**

8 A. The first sentence says that "Bacteria in
9 septic tank systems are able to digest only organic
10 matter present in sanitary waste."

11 **Q. Can you explain that for me?**

12 A. The bacteria that inhabit the sludge layer in
13 the system feed on organic matter that's present in
14 the sanitary waste. The presence of other materials
15 such as industrial chemicals are generally not --
16 those chemicals are generally not something that can
17 serve as a food source for those bacteria. Therefore,
18 they would not be altered in passing through the tank
19 by those processes.

20 **Q. Okay. Aren't there many materials that would**
21 **go into a septic system that would biodegrade even on**
22 **their own?**

23 A. Yes, there are.

24 **Q. What are some examples that you're aware of?**

25 A. I'm not familiar with -- very familiar with

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1 other information on their potential toxicity in the
2 environment or to microbes when that's available.

3 **Q. Well, you indicate that "shifts in pH could**
4 **also have deleterious effects on processes within the**
5 **septic tank system." My understanding of septic tanks**
6 **is there's a variety of different bacteria in those**
7 **tanks. If you had a shift in the pH, wouldn't you**
8 **also just simply have a shift in the population of**
9 **bacteria?**

10 A. That's one potential effect.

11 **Q. And again in this instance, with the**
12 **Sunnyside Industrial Park septic system, you don't**
13 **have any data to tell you or indicate to you what**
14 **happened in this case?**

15 A. No.

16 **Q. And you don't know whether there were any**
17 **effects on the processes within the septic system as a**
18 **result of a shift in pH?**

19 A. I don't know.

20 **Q. We don't even know if a pH shift occurred?**

21 A. We don't know if it occurred.

22 **Q. And just so the record is clear, you don't**
23 **have any data on the septic tank for the year -- and**
24 **by septic tank, I mean the septic tank or the septic**
25 **system in the Sunnyside Industrial Park. But you**

1 degradation pathways that would occur in this type of
2 system.

3 **Q. But there are other processes that work**
4 **degrading these materials other than just the bacteria**
5 **working on them?**

6 A. Yes.

7 **Q. And if we have something that's biodegrading,**
8 **that would reduce the toxicity?**

9 A. Not necessarily. Some chemicals degrade into
10 forms that are more toxic than their original form.

11 **Q. How about the chemicals on pages 3 and 4?**

12 A. I did not do an analysis of degradation
13 pathways of those chemicals so I couldn't tell you
14 that.

15 **Q. Okay. In the next sentence, you indicate**
16 **"The chemicals listed on the MSDSs are not among the**
17 **compounds generally digested by these bacteria." But**
18 **I guess some of those compounds would biodegrade or**
19 **could biodegrade even without the assistance of**
20 **bacteria?**

21 A. Yes, they potentially could. 51142

22 **Q. And I guess that's what I'm understanding too**
23 **from the next sentence, "Unless chemical degradation."**
24 **And that would be --**

25 A. Yes, that's what I'm referring to.

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1 Q. -- just biodegradation other than through the
2 use of bacteria. Or physical processes (adsorption
3 into the sludge) occurred in the septic system, many
4 of these chemicals would pass through into the
5 leachfield and drain into the soil." Which chemicals
6 are you referring to when you say many of these
7 chemicals would pass through the leachfield and drain
8 into the soil?

9 A. I'm referring to chemicals that do not
10 undergo chemical degradation or physical processes
11 such as adsorption into the sludge.

12 Q. Do you have any of the chemicals listed on
13 pages 3 and 4 specifically in mind?

14 A. No, I do not.

15 Q. So can you tell me which of the chemicals on
16 pages 3 and 4 in your opinion would pass through the
17 leachfield and drain into the soil?

18 A. I did not do an analysis of that, because I
19 did not look at the potential for other types of
20 degradation.

21 Q. That was just beyond the scope of what you
22 were asked to do?

23 A. Yes.

24 Q. Let's see. Would you read that next sentence
25 for me starting with depending.

1 a carcinogen?

2 A. That is based on reviewing the EPA tap water
3 screening level.

4 Q. What is the -- is that an EPA -- explain to
5 me what that means I guess is what I'm trying to
6 understand.

7 A. Some of the regions of EPA publish screening
8 levels for media such as tap water, soil, in which
9 they have used -- taken the toxicity information to
10 humans and figured out what concentration in the
11 environment would correspond to a ten to the minus six
12 level of risk of developing cancer.

13 Q. Let me go through another exhibit with you.
14 And maybe this will help me to understand. I need to
15 have the reporter mark this real quick.

16 (Exhibit No. 5 marked.)

17 BY MR. SCHUSTER:

18 Q. Let me show you what's been marked as Exhibit
19 No. 5.

20 A. Okay.

21 Q. And I'll just represent to you this is an
22 MSDS for hydroquinone. Have you looked at the MSDS
23 previously for hydroquinone?

24 A. I have looked at an MSDS for hydroquinone. I
25 do not know if it was the same one that was just

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1 A. --"Depending on soil characteristics and depth
2 to groundwater, chemicals exiting the septic system
3 could potentially reach groundwater."

4 Q. Do you have any data on the soil
5 characteristics of the Sunnyside Industrial Park
6 septic system?

7 A. No, I do not.

8 Q. Do you have any data on the depth to
9 groundwater?

10 A. No.

11 Q. So if I understand your report, you're just
12 saying that it's a possibility that these chemicals
13 could reach groundwater?

14 A. Yes. As part of a risk assessment, we look
15 at what potential pathways may be -- may exist.

16 Q. Do you have any opinion as to whether that
17 will happen?

18 A. No. That was not part of the analysis that I
19 conducted.

20 Q. The next sentence, would you read that for me
21 starting with one chemical. 325

22 A. "One chemical, hydroquinone, is a carcinogen
23 with an EPA tap water screening level of 1.2 ppb (at
24 ten to the minus six risk)."

25 Q. What is your basis for your opinion that it's

1 marked as an exhibit. They are available from
2 multiple companies.

3 Q. Is it different companies who put these out
4 or the government?

5 A. Manufacturers who sell the products develop
6 them.

7 Q. Turn with me to paragraph 11 of Exhibit No.
8 5.

9 A. Section 11?

10 Q. Yes. It's titled Toxicological Information.
11 Would you go ahead and read that.

12 A. It says "General: The International Agency
13 for Research on Cancer (IARC) concluded in 1998 that:
14 'There is inadequate evidence in humans for the
15 carcinogenicity of hydroquinone. There is limited
16 evidence in experimental animals for the
17 carcinogenicity of hydroquinone. Hydroquinone is not
18 classifiable as to its carcinogenicity to humans
19 (Group 3)'."

20 Q. How does that dovetail with your report
21 indicating that hydroquinone is a carcinogen?

22 A. The report states that hydroquinone is a
23 carcinogen based on the way EPA classified the
24 toxicological endpoint that it used in setting its
25 screening level. It evaluated it as a carcinogen.

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1 Q. So the EPA evaluated it as a potential
2 carcinogen?

3 A. They evaluated it based on its
4 carcinogenicity endpoint.

5 Q. Did you look at this MSDS or any other MSDS
6 for hydroquinone in formulating your opinion as to it
7 being a carcinogen?

8 A. In forming my opinion as to whether it was a
9 carcinogen, no. I used the endpoint designated by EPA
10 in developing its screening level for risk assessment.

11 Q. Well, this might be beyond the scope of your
12 expertise I guess. But do you have an opinion about
13 whether hydroquinone is a carcinogen?

14 A. I would have to -- to answer that question, I
15 would have to review additional material in the EPA
16 IRIS database which is what they base their
17 designation of carcinogenicity for the screening level
18 on.

19 Q. So if I understand what you're saying here in
20 your report, you're just saying that the EPA has set a
21 tap water screening level of 1.2 parts per billion?

22 A. Billion.

23 Q. But you're not -- so you're saying what the
24 EPA has done, you're not saying that it is a
25 carcinogen?

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1 A. That's correct. They may have evaluated it
2 as a carcinogen because it is a carcinogen or it's a
3 probable carcinogen. You would have to review their
4 IRIS database and their other toxicity databases to
5 determine which of those is true.

6 Q. Okay. I think previously in your report you
7 indicated that hydroquinone could destroy bacteria,
8 but you don't have an opinion as to whether that
9 happened at the Sunnyside Industrial Park septic
10 system?

11 A. That's correct.

12 Q. Towards the end of that paragraph, you
13 indicate "In addition, other chemicals that are not
14 carcinogens could contaminate groundwater, including
15 isopropyl alcohol, nitrate (if the septic system
16 overflows), and salts from the RO brine." And again,
17 if I understand your testimony, you don't have any
18 data indicating that the groundwater has been
19 contaminated?

20 A. No, I do not.

21 Q. You don't have any opinions as to whether it
22 will be contaminated?

23 A. No. As I said here, it is my opinion on the
24 potential for it to occur.

25 Q. By potential you just mean it's a

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1 possibility?

2 A. In risk assessment, yes, potential means that
3 the pathway exists in this case.

4 Q. But you're not saying that it's probable or
5 will happen or is likely to happen?

6 A. No.

7 Q. Now, at the end of that sentence, you
8 indicate salts from the RO brine. Did you mean salts
9 from a water softener, because my understanding of how
10 an RO system works is that the only discharge from an
11 RO system is just water. And by RO I mean reverse
12 osmosis.

13 A. Yes. My understanding was that there were
14 some salts from one of the processes, maybe the water
15 softener or the RO or the reverse osmosis, that there
16 was some higher salt water that may have been released
17 into the system. What I've written here is simply
18 that if that were to pass through the system and into
19 groundwater, it would be difficult to remove those
20 materials later.

21 Q. But again you don't have any data as to
22 whether that happened?

23 A. No.

24 Q. Or will happen?

25 A. No.

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1 Q. And that last sentence, "These compounds can
2 be difficult to subsequently remove from the
3 groundwater." Can you just explain to me what you
4 mean by that?

5 A. That sentence simply indicates that these
6 types of chemicals in my experience in the
7 environmental field, things like isopropyl alcohol,
8 nitrate, and salts, tend to be very difficult later to
9 remove from water, requiring a very high level of
10 purification to remove them.

11 Q. All right. I think I understand. Does this
12 report then, pages 1 through 4, contain all of your
13 opinions in this case?

14 A. Yes, it does.

15 Q. Have you been asked to produce any additional
16 opinions?

17 A. No.

18 Q. Have you been asked to rebut anyone else's
19 opinions?

20 A. No.

21 Q. Let me just kind of wrap up then with some
22 questions and make sure I understand some things. I
23 guess, if I understand your report and your testimony
24 today, you don't have any opinion as to whether the
25 chemicals listed on these MSDS sheets killed or harmed

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1 any of the bacteria in Sunnyside Industrial Park's
2 septic system?

3 MR. FULLER: Objection, asked and answered.
4 You can go ahead and answer.

5 THE WITNESS: Okay. Could you clarify
6 whether you are asking if my opinion is to whether it
7 has actually occurred?

8 BY MR. SCHUSTER:

9 Q. Yeah. Maybe I can ask it a little bit
10 better. And I may have already asked you this
11 question, I'm not sure.

12 Do you have an opinion as to whether any of
13 the chemicals listed on pages 3 and 4 of your report
14 killed any of the bacteria or harmed any of the
15 bacteria in the Sunnyside Industrial Park septic
16 system?

17 A. I cannot provide an opinion as to whether it
18 actually occurred. My report is my opinion of whether
19 it could potentially occur.

20 Q. Do you have any opinions as to the failure of
21 the Sunnyside Industrial Park septic system in
22 approximately June of 2006?

23 A. No. That's outside the scope of what I was
24 asked to do.

25 Q. And if you were asked to look at the failure

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1 of a septic system, what would you do with your
2 expertise to investigate the failure of a septic
3 system?

4 MR. FULLER: Object as to form. Go ahead.

5 THE WITNESS: The failure of the overall
6 septic system is really beyond my scope of expertise.

7 BY MR. SCHUSTER:

8 Q. Okay. Have you looked at or seen any other
9 expert opinions in this case?

10 A. Yes, I have reviewed expert opinions by Eric
11 Nuttall, Robert Starr, and Mr. Meacham.

12 Q. And you reviewed those before or after
13 producing your report?

14 A. I reviewed them well after producing my
15 report.

16 Q. So just recently you reviewed those?

17 A. Yes.

18 Q. Have you been asked to rebut any of the
19 opinions that you've seen by Eric Nuttall, Robert
20 Starr, or Gary Meacham?

21 A. Could you clarify what you mean by rebut.

22 Q. Well, to address any of those opinions in an
23 additional or supplemental report?

24 A. No. But I was asked to review their opinions
25 and give my opinion on their opinions. But not in a

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1 supplemental report.

2 Q. Okay. And you've done that with your
3 discussions with Mr. Fuller?

4 A. Yes.

5 Q. But all of that is beyond the scope of what's
6 in your report here today?

7 A. Yes.

8 MR. SCHUSTER: Let me take another break no
9 just a minute. I think I'm just about done. Let's
10 just take five minutes.

11 (Recess.)

12 MR. SCHUSTER: Let's go back on the record.

13 BY MR. SCHUSTER:

14 Q. We left off with you indicating that you had
15 looked at the opinions of Nuttall, Starr, and Meacham.
16 And I think you indicated that you've reviewed their
17 reports?

18 A. Yes, I have.

19 Q. And I think you indicated to me that you have
20 been asked to address their reports; is that right?

21 A. I was asked to provide my opinion of what I
22 saw in the reports, yes.

23 Q. Have you formulated any opinions of what you
24 saw in those reports?

25 A. Yes.

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1 Q. Do you have any opinions as to the failure
2 then of the Sunnyside Industrial Park septic system in
3 approximately June of 2006?

4 A. No, I did not review those portions of the
5 report because they are outside my area of expertise.

6 Q. What opinions have you formulated after
7 having reviewed the reports of Messrs. Nuttall,
8 Meacham, and Starr?

9 A. Could I answer?

10 MR. FULLER: Uh-huh.

11 THE WITNESS: In Mr. Nuttall's report, I
12 noticed that he indicated that he thought that metals
13 in the septic tank would be less toxic to bacteria
14 once they -- less bioavailable to bacteria once they
15 absorb to the sediment, which I disagree with based on
16 the information I placed in my own report. I believe
17 they would still access the metals in the process of
18 digesting the sludge.

19 BY MR. SCHUSTER:

20 Q. So you disagree with his assessment of copper
21 and zinc being accessible to bacteria in the sludge?

22 A. Yes.

23 Q. All right. Any other opinions you've
24 developed after having reviewed those reports?

25 A. A number of concentrations that were supposed

Determination of Toxicity to Septic Tank Bacteria

Source and Basis of Values for Toxicity

EPA's ECOTOX on-line database was used as the source of the toxicity values for assessing the toxicity of the hazardous chemicals listed on the MSDSs provided by Fuller and Carr. The citation for ECOTOX is:

U.S. Environmental Protection Agency. 2006. ECOTOX User Guide: ECOTOXicology Database System. Version 4.0. Available: <http://www.epa.gov/ecotox/>

The searches were conducted from 5/21/07 to 5/24/07 and the toxicity values were compiled in the accompanying Excel spreadsheet. Toxicity values specifically for anaerobic bacteria for a large number of chemicals are not available. However, septic tank systems contain an entire assemblage of microorganisms. The tank portion functions primarily on digestion of organic matter by various species of anaerobic bacteria, but the sludge in the tank also contains fungi and protozoans. The leach field portion further processes waste using aerobic bacteria and algae that form a "slime mat" around the tubing in the leach field. Therefore, organisms that are considered indicative of potential toxicity to aquatic microorganisms in general are appropriate to the assessment of toxicity to septic system microorganisms. Toxicity values for green algae and blue-green algae (blue-green algae are actually photosynthetic bacteria, the cyanobacteria) are widely in ecological studies and tests of effluent to assess the toxicity of chemicals to microorganisms. Toxicity values for green algae and blue-green algae from the ECOTOX database were used in this assessment. The toxicity endpoint used for this assessment was the acute dose LC50 or EC50. This endpoint is the concentration of a chemical that kills or effects 50 % of the organisms in the test. The LC50/EC50 values are compared to a value selected as the benchmark defining "toxic".

There is no single standardized value that divides toxic from nontoxic, partly because the impact of a chemical depends on the relationship between its EC50 and the levels in the system of concern. The concentrations inside a septic system are not known; they depend on the product put into the lines, the surrounding flow during the discharge, and whether the product passes through the system quickly or partitions into the sludge and remains in the septic tank. Therefore, this is a semi-qualitative risk assessment. As an initial criterion, and LC50/EC50 of 100 mg/L was used to divide the hazardous chemicals on the MSDSs into potentially toxic and nontoxic. The LC50/EC50 of 100 mg/L corresponds to the limit for the change to the category "non-toxic" under the EU (European Union) OECD (Organization for Economic Cooperation and Development and GHS (Global Harmonization System) for acute toxicity to algae. Numerous MSDSs and research results also characterized values at or above 100 mg/L as nontoxic. This value is also used by some municipalities as the criterion for designating "green janitorial products". Products with an LC50/EC50 higher than 100 mg/L are considered safe for disposal into any septic tank system.

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EXHIBIT

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DEAN
ASSOCIATES

Based on this criterion of 100 mg/L for an EC50/LC50, several of the chemicals present in the products used by Printcraft could have potentially harmful effects on septic tank bacteria. These chemicals include hydroquinone, sodium metabisulfite, ethanolamine, copper, and zinc. Even if these chemicals are not present in concentrations sufficient to kill microorganisms in the septic tank, they could reduce the bacterial population or interfere with their metabolism preventing the bacteria from efficiently digesting the solids. In addition, some of the chemicals (zinc and copper) may accumulate in the tank sludge and bacteria could be exposed to higher concentrations than initially introduced into the tank.

The products containing the chemicals above include G101P Developer Working Strength (hydroquinone), G101P Developer Part B (hydroquinone and sodium metabisulfite), the aqua sparkle 872 and 874 gold flexo inks (copper at 26% and zinc at 11% by weight) and the Pro Plus SP Line Extender and Inks (ethanolamine).

A chemical involved in the print processes not listed on the MSDSs is silver. Silver dissolved in water is extremely toxic to bacteria, with an EC50 of 1.2 ppb (0.001 mg/L). Routine discharges of silver in the water to the septic tank could severely impact the microbial populations and processes within the septic system.

In addition, sodium carbonate is present in the G101P Developer Working Strength and G101P Developer Part B; both MSDSs for these chemicals note that there may be ecological effects due to shifts in pH from this product. Shifts in pH could also have deleterious effects on processes within the septic tank system.

Consequences to Human Health and the Environment

Bacteria in septic tank systems are able to digest only organic matter present in sanitary waste. The chemicals listed on the MSDSs are not among the compounds generally digested by these bacteria. Unless chemical degradation or physical processes (adsorption into the sludge) occurred in the septic system, many of these chemicals would pass through into the leachfield and drain into the soil. Depending on soil characteristics and depth to groundwater, chemicals exiting the septic system could potentially reach groundwater. One chemical, hydroquinone, is a carcinogen with an EPA tap water screening level of 1.2 ppb (at 10⁻⁶ risk). Some of the developer used in the process at Printcraft contains 60% to 100% hydroquinone, which could destroy the septic tank bacteria and flow through the system to potentially reach groundwater. In addition, other chemicals that are not carcinogens could contaminate the groundwater, including isopropyl alcohol, nitrate (if the septic system overflows), and salts from the RO brine. These compounds can be difficult to subsequently remove from the groundwater.

MSDS compound	chemical listed	CAS #	toxicity to microorganisms tox endpoint value	bac tox on MSDS?	source for tox data
AS 872 gold and aqua sparkle 874 gold flexo inks	dimethylethanolamine	108-01-0	no tox data for microbes	no	
AS 872 gold and aqua sparkle 874 gold flexo inks	propylene glycol	57-55-6	no tox data for microbes	no	
AS 872 gold and aqua sparkle 874 gold flexo inks	N-methylpyrrolidone	872-50-4	no tox data for microbes	no	
paper pH adjuster	proprietary amine	124-68-5	n/a	no	
film III C opaque white	aluminum trihydrate	21845-51-2	no tox data for microbes	no	
aqua sparkle 872 gold flexo ink	copper (28%)	7440-50-8	EC10-green algae 0.14 to 0.28 mg/L	no	ECOTOX
aqua sparkle 872 gold flexo ink	copper (28%)	7440-50-8	EC50-blue-green algae 0.084 to 0.098 mg/L	no	ECOTOX
aqua sparkle 872 gold flexo ink	copper (28%)	7440-50-8	EC50-green algae 0.98 mg/L	n/a	ECOTOX
aqua sparkle 872 gold flexo ink	copper (28%)	7440-50-8	EC50-other green algae (several species) 0.5 mg/L	n/a	ECOTOX
aqua sparkle 872 gold flexo ink	copper (28%)	7440-50-8	EC50-blue-green algae (phormidium) 0.013 to 0.3 mg/L	n/a	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	zinc (11%)	7440-66-6	EC50-Pseudok. green algae 0.015 to 0.17 mg/L	no	ECOTOX
aqua sparkle 872 gold flexo ink	zinc (11%)	7440-66-6	EC50-Dunaliella green algae 6 mg/L	no	ECOTOX
aqua sparkle 872 gold flexo ink	propylene glycol	57-55-6	no tox data for microbes	no	
Pro Plus SP Line Extender and Inks	ethanolamine	141-43-5	EC10-green algae 31 mg/L	no	ECOTOX
Pro Plus SP Line Extender and Inks	ethanolamine	141-43-5	EC50-green algae 70 mg/L	no	ECOTOX
Pro Plus SP Line Extender and Inks	ethanolamine	141-43-5	LOEC -Schenedesmus- green algae 0.75 to 0.97 mg/L	no	ECOTOX
Pro Plus SP Line Extender and Inks	ethanolamine	141-43-5	LOEC-blue-green algae 2.1 mg/L	no	ECOTOX
Pro Plus SP Line Extender and Inks	propylene glycol	57-55-6	no tox data for microbes	no	
UV Inks and coatings	triethanolamine	102-71-6	EC50-green algae 760 mg/L	no	ECOTOX
UV inks and coatings	triethanolamine	102-71-6	LOEC-blue-green algae 19 mg/L	no	ECOTOX
UV Inks and coatings	triethanolamine	102-71-6	LOEC -Schenedesmus- green algae 1.8 mg/L	no	ECOTOX
UV inks and coatings	2-hydroxy-2-methyl-1-phenyl-1-propanone	7473-98-5	no tox data for microbes	no	
UV inks and coatings	acrylate monomers	n/a	n/a		
3451 Fountain Concentrate	2-butoxyethanol	111-76-2	LOEC-green algae 900 mg/L	no	ECOTOX
3451 Fountain Concentrate	2-butoxyethanol	111-76-2	LOEC-blue-green algae 35 mg/L	no	ECOTOX
3451 Fountain Concentrate	2-butoxyethanol	111-76-2	EC10 algae 1000 mg/L	no	ECOTOX
3451 Fountain Concentrate	ammonium nitrate	6484-52-2	EC03 83 mg/L	no	ECOTOX
IPA	isopropyl alcohol	67-63-0	LC50 >1,000 mg/kg	yes	
IPA	isopropyl alcohol	67-63-0	EC50-green algae 1,000 mg/kg	n/a	ECOTOX
IPA	isopropyl alcohol	67-63-0	EC50-blue-green algae 1,000 mg/kg	n/a	ECOTOX
Developer & Replenisher Concentrate	potassium hydroxide		no tox data for microbes		
Developer & Replenisher Concentrate	potassium sulfite		no tox data for microbes		
Developer & Replenisher Concentrate	potassium carbonate		no tox data for microbes		
Developer & Replenisher Concentrate	hydroquinone	123-31-9	EC50-E. Coli 34 mg/L	yes	
Developer & Replenisher Concentrate	hydroquinone	123-31-9	EC50-other bacteria 29.25 mg/L	yes	
Developer & Replenisher Concentrate	hydroquinone	123-31-9	EC50-blue-green algae 17 to 24 mg/L	no	ECOTOX
Fixer Hardener	aluminum sulfate	10043-01-3	EC50-blue-green algae 25 mg/L		
Negative Plate Developer	ethylene glycol phenyl ether	122-99-6	no tox data for microbes		
Speedy Dry	cobalt organic acid salt		no tox data for microbes		
Speedy Dry	manganese organic acid salt		no tox data for microbes		
Speedy Dry	raw tung oil		no tox data for microbes		
Speedy Dry	heavy petroleum distillate		no tox data for microbes		
Fluid Inks process yellow	tetramethyl-5-Decyne-4,7-diol	126-86-3	no tox data for microbes		
Fluid Inks process yellow	octamethylcyclotetrasiloxane	556-87-2	no tox data for microbes		
LOEC = lowest observed effect concentration. For microorganisms like algae, the effect is usually the population growth rate					
SILVER RELEASED IN PROCESS?					

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MSDS compound	chemical listed	CAS #	toxicity to microorganisms		bac tox on MSDS?	source for tox data
			tox endpoint	value		
On-the run plate cleaner	propylene glycol monomethyl ether	1569-01-3	no tox data for microbes		no	
On-the run plate cleaner	silicic acid disodium salt	6834-92-0	EC0	>1,000 mg/L	yes	
RC-791 Finisher	citric acid	77-92-9	tox threshold-green algae	640 mg/L	no	on-line MSDS
RC-791 Finisher	dextrin	9004-53-9	no tox data for microbes		no	
G101P Developer Working Strength	hydroquinone (1-5%)	123-31-9	EC50-E. Coli	34 mg/l	yes	
G101P Developer Working Strength	hydroquinone (1-5%)	123-31-9	EC50-other bacteria	29.25 mg/L	yes	
G101P Developer Working Strength	sodium carbonate	497-19-8	note eco effects due to pH shift		no	
G101P Developer Working Strength	sodium sulfite	7757-83-7	EC50	770 mg/L	yes	
G101P Developer Working Strength	sodium bromide	7647-15-6	NOEC	3200 ng/L	yes	
G101P Developer Part B	hydroquinone (80-100%)	123-31-9	EC50-E. Coli	34 mg/l	yes	
G101P Developer Part B	hydroquinone (80-100%)	123-31-9	EC50-other bacteria	29.25 mg/L	yes	
G101P Developer Part B	hydroquinone (80-100%)	123-31-9	EC50-green algae	17 to 24 mg/L	no	ECOTOX
G101P Developer Part B	sodium bromide	7647-15-6	NOEC	3200 ng/L	yes	
G101P Developer Part B	3-pyrazolidinone, 1-phenyl	92-43-3	no tox data for microbes		no	
G101P Developer Part B	sodium metabisulfite	7681-57-4	EC50	58 mg/L	yes	
G101P Developer Part B	polyether polyol		not given	>5000 mg/L	yes	
G101P Developer Part A	sodium sulfite	7757-83-7	EC50	770 mg/L	yes	
G101P Developer Part A	sodium carbonate	497-19-8	note eco effects due to		no	
G101P Developer Part A	sodium hydroxide	1310-73-2	no tox data for microbes		no	
G101P Developer Part A	ethylenediamine Tetraacetic Acid Tetrasodium Salt	84-02-8	EC10 bacteria(48 hrs)	663 mg/L	yes	
G101P Developer Part A	ethylenediamine Tetraacetic Acid Tetrasodium Salt	84-02-8	LOEC-blue-green algae	78 mg/L	n/a	ECOTOX
G101P Developer Part A	ethylenediamine Tetraacetic Acid Tetrasodium Salt	84-02-8	LOEC-green algae	11 mg/L	n/a	ECOTOX
FPC Finisher/Preserver/Cleaner	sodium phosphate monobasic	7558-80-7	no tox data for microbes		no	
FPC Finisher/Preserver/Cleaner	naphtha	64742-48-9	no tox data for microbes		no	
FPC Finisher/Preserver/Cleaner	polyethylene glycol	25322-68-3	LOEC-green algae	100 mg/L	no	ECOTOX
flexo inks	ethylene glycol	107-21-1	LOEC10-green algae	10000 mg/L	no	ECOTOX
flexo inks	ammonium hydroxide	1336-21-6	no tox data for microbes		no	
flexo inks	n-propanol	71-23-8	LOEC-blue-green algae	225 mg/L	no	ECOTOX
flexo inks	n-propanol	71-23-8	EC50-green algae	4480 mg/L	no	ECOTOX
flexo inks	n-propanol	71-23-8	LOEC-green algae	3100 mg/L	no	ECOTOX
flexo inks	dimethylethanolamine	108-01-0	no tox data for microbes		no	
AS 872 gold and aqua sparkle 874 gold flexo inks	copper (26%)	7440-50-8	EC10-green algae	0.14 to 0.28 mg/L	no	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	copper (26%)	7440-50-8	EC50-blue-green algae	0.064 to 0.098 mg/L	no	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	copper (26%)	7440-50-8	EC50-green algae	0.98 mg/L	n/a	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	copper (26%)	7440-50-8	EC50-other green algae (several species)	0.5 mg/L	n/a	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	copper (26%)	7440-50-8	EC50-blue-green algae (phormidium)	0.013 to 0.3 mg/L	n/a	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	zinc (11%)	7440-66-6	EC50-Dunaliella green algae	8 mg/L	no	ECOTOX
AS 872 gold and aqua sparkle 874 gold flexo inks	zinc (11%)	7440-66-6	EC50-Pseudok. green algae	0.015 to 0.17 mg/L	no	ECOTOX

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Aug. 28, 2006

Sunnyside Utilities Inc.
P.O. Box 1768
Idaho Falls, Id 83403

Re: Sunnyside Industrial and Professional Park

Dear Mr. Woolf and Beck;

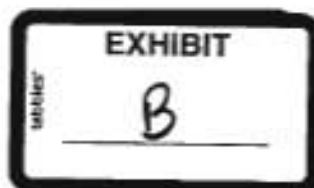
This is to answer your inquiry about depositing ink into your septic tank and absorption field in the above referenced project. It is my opinion that the amounts of ink deposited would line the absorption trenches and tend to clog the pores in the soil so that little or no fluid would be able to absorb into the soil, thereby leaving the absorption field nearly useless. If the ink were not very diluted, it would cause failure of the system in a very short time.

Ink is not considered human waste and could very easily be deposited into a separate seepage pit on site without even a permit by District Seven Health and would thereby not overload the septic system.

If you have any further questions regarding this project, please call me at this office at (208) 522-8033.

Sincerely,


Michael L. Bond, P.E.



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MARK R. FULLER (ISB No. 2698)
 FULLER & CARR
 410 MEMORIAL DRIVE, SUITE 201
 P.O. Box 50935
 IDAHO FALLS, ID 83405-0935
 TELEPHONE: (208) 524-5400

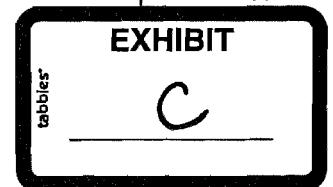
ATTORNEY FOR DEFENDANT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
 DISTRICT OF THE STATE OF IDAHO IN AND FOR
 THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	
)	
v.)	DEFENDANT'S RESPONSE TO
)	PLAINTIFF'S FIRST SET OF
)	INTERROGATORIES, REQUESTS
SUNNYSIDE UTILITIES, INC., an)	FOR ADMISSION AND REQUESTS
Idaho corporation,)	FOR PRODUCTION
)	
Defendant.)	
)	
)	

COMES NOW the Defendant, Sunnyside Park Utilities, Inc., by and through his counsel of record, Mark R. Fuller and Daniel R. Beck, and submits the following Answers to Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admissions.

GENERAL OBJECTIONS



As to each of the Requests and Responses thereto which are set forth below, the following general objections are made with regard to said responses and are hereby incorporated by reference.

1. Defendant objects to the discovery requests to the extent they seek information subject to the attorney-client privilege, constitute attorney work product, which are

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,
 REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION

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proprietary or confidential, or are otherwise protected from disclosure.

2. The Defendant has not completed its discovery, trial preparation, or investigation of the facts underlying this action and therefore, gives these responses without prejudice to his right to supplement each response as necessary.

3. Defendant objects to plaintiff's definition of "YOU" to extend to any individual or entity other than this answering defendant. This defendant will respond only on behalf of itself.

INTERROGATORY NO. 1: Please state the name, last known address and telephone number of each non-expert witness you intend to call to testify on your behalf in this matter and in regard thereto, please also state the following: (a) the relevant facts which you understand to be in the knowledge of each such witness, and (b) the substance of the testimony expected to be elicited from each such witness.

RESPONSE TO INTERROGATORY NO. 1: Defendant has identified and currently intends to call the following persons as non-expert witnesses in the cause of this matter:

1. Doyle Beck
Address: 3655 Professional Way
Tel. 208-529-9891
Subject Matter: It is expected that he will testify concerning all facts and circumstances related to this litigation.
2. Kirk Woolf
Address: 3821 Professional Way #17
Tel.: 208-522-2950
Subject Matter: It is expected that he will testify concerning all facts and circumstances related to this litigation.
3. Craig Beck

Address: 3655 Professional Way
Tel: 208-529-9891

Subject Matter: It is expected that he will testify concerning water meter readings in the subdivision; Printcraft's overflows of the green fertilizer tank; and Printcraft's actions in regard to disruption of water meter readings.

4. Travis Waters:

Subject Matter: It is expected that he will testify concerning Printcraft's discharges into the sewer system; meetings and conversations between Printcraft and Sunnyside; CTR Development's and CTR Management's involvement in issues related to the litigation; construction of the building; MSDS sheets provided to Printcraft by chemical suppliers; training of employees; plumbing in the building Printcraft occupies; Printcraft's efforts to comply with Sunnyside's requests.

5. Terry Luzier:

Subject Matter: It is expected that he will testify concerning Printcraft's discharges; Printcraft's meetings with Sunnyside; Printcraft's attempts to comply with Sunnyside's requests.

6. Cindy Donovan

Subject Matter: It is expected that she will testify concerning Printcraft's customer relations and damages.

7. Travis Peterson

Address: Layton, Utah
208-757-0004

Subject Matter: It is expected that he will testify concerning Printcraft's discharges; warnings he gave to Printcraft Press regarding its methods of operations; Printcraft's problems with its equipment; Printcraft's use of the MSDS sheets and instructions given to employees regarding discharge of chemicals; Printcraft's attempts to comply with the requests of Sunnyside regarding the discharges.

8. Ralph Schoneman

Address: 2005 Olympia Drive, Idaho Falls, Idaho

Subject Matter: It is expected that he will testify concerning the overflow from Defendant's septic system in June of 2006 and concerning the inks and the chemical smells in the overflow.

9. Kelly Clay

Address: 4470 N. 25th East, Idaho Falls, Idaho 83401

Subject Matter: Installation of septic tanks and drainfield. System overflow. Conversations with Travis Waters and reconnection of water during installations.

Defendant reserves the right to supplement its Answer to Interrogatory No. 1 when and if during the course of this litigation and discovery additional individuals are identified by Plaintiff who have knowledge of the facts or circumstances of this case and/or are to be relied upon by Plaintiff as non-expert witnesses in the litigation of this cause.

INTERROGATORY NO. 2:

Please identify each and every person having knowledge of or relating to the subject matter of this lawsuit, whether or not they were interviewed by you, including the date, time and place of such interviews if any, the persons present at said interview, the person's address and telephone numbers, their connection with the lawsuit, the purpose of such interviews, whether such interviews or facts are recorded in writing or any other manner and, if so, the present location of such recording and the identity of their present custodian.

RESPONSE TO INTERROGATORY NO. 2: The following persons have

knowledge regarding the subject matter of this lawsuit:

1. Doyle Beck
 - a. Multiple interviews
2. Kirk Woolf
 - a. Multiple interviews
3. Craig Beck
 - a. No interview
4. Travis Peterson
 - a. Interviewed on January 30, 2007 at the offices of Fuller & Carr. Present were Mr. Peterson, Sunnyside's counsel, and Doyle Beck. The meeting was only recorded by Sunnyside's counsel on note paper and is attorney work product. Such note paper is currently possessed by Sunnyside's counsel. As a result of the meeting an affidavit was drafted by Sunnyside's counsel and signed by Mr. Peterson. A copy of such affidavit is provided in response to the Requests for Production. Deposition taken on May 18, 2007.

5. Sandan Wixom
 - a. Interviewed on May 8, 2007 at Snake Bite Café, Idaho Falls, Idaho. Present were Mr. Wixom and Sunnyside's counsel. The meeting was only recorded by Sunnyside's counsel on note paper. Such note paper is currently possessed by Sunnyside's counsel and is attorney work product.
6. Kellye Eager
 - a. No interview
7. Greg Eager
 - a. No interview
8. Richard Horne
 - a. No interview
9. Willie Tuscher
 - a. No interview
10. James Johnson
 - a. No interview
11. Kelly Clay
 - a. No interview
12. Larry Shult
 - a. No interview
13. Luke Boyle
 - a. No interview
14. Cindy Donovan
 - a. No interview, deposition taken May 17, 2007.

INTERROGATORY NO. 3: Please state whether you, your attorneys or anyone acting on your behalf has obtained statements in any form from any person relating to the events relevant to this litigation. If so, please identify the individuals who provided said statements and the substance of said statements.

RESPONSE TO INTERROGATORY NO. 3: Yes. Defendant has obtained an affidavit from Travis Peterson, a former employee of Plaintiff. A copy of such affidavit is provided in Defendant's response to Plaintiff's Request for Production. Defendant has also taken the Depositions of Printcraft Press, Terry Luzier, Cindy Donovan and Travis Peterson.

INTERROGATORY NO. 4:

Please describe and identify each document,

diagram, sketch, photograph, or other item of tangible, physical evidence of any nature whatsoever which you might use or intend to introduce in regard to this matter as an exhibit, by author, date and subject matter, and set forth the contents of each such document.

RESPONSE TO INTERROGATORY NO. 4: Defendant has not yet identified

all the documents it intends to introduce as exhibits at any hearing or at trial of the above-entitled matter. For this reason Defendant reserves the right to supplement its Answer to Interrogatory No. 4 when and if additional documents are obtained by Defendant. The documents that Defendant has obtained, which are in its possession at this time and which at this time it intends to utilize as an exhibit in the above-entitled matter are as follows:

Page	Date	Type	Description	Author
00001	2/29/1996	Application	Subdivision Application	Kirk Woolf/Joe Finlinson
00002	6/18/1996	Permit	Bonneville County Building Permit	Unknown/Steven Serr
00003	8/15/1996	Permit	D7HD Septic Permit	Lance Peterson/Joe Finlinson
00004	8/23/1996	Report	D7HD Septic System Inspection Report	Joe Finlinson
00005	8/15/1996	Application	D7HD Sewer Application	Kirk Woolf/Unknown
00015	7/30/1999	Plat	Official Plat Map for the Subdivision	Benton Engineering
00016	8/4/1999	Agreement	Development Agreement	Bonneville Cty/Kirk Woolf
00020	3/20/2002	Agreement	Rules and Regulations	Sunnyside Park Utilities, Inc
00029	4/16/2002	Agreement	Third Party Beneficiary Agreement	Sunnyside Park Utilities, Inc
00039	2/20/2004	Minutes	Meeting Minutes of Sunnyside	Sunnyside Park Utilities, Inc
00041	4/15/2002	Letter	D7HD letter to Woolf & Beck	Rich Bly
00044	5/6/2002	Letter	D7HD letter to Bonneville County	Marilyn Anderson
00045	9/10/2002	Letter	Idaho Falls letter to Corporate Express	Chad Stanger
00046	9/13/2002	Permit	Corporate Express Septic Permit	Tom Fern?/Rich Bly
00048	9/13/2002	Letter	D7HD Letter to Corporate Express	Rich Bly
00049	9/12/2005	Check	\$1,800.00 check for connection	CTR Development

00050	6/28/2006	Letter	D7HD Letter to Sunnyside	Kellye Eager
00052	6/29/2006	Permit	D7HD Septic Permit	Kirk Woolf/Linda Clecellio?
00053	7/2/2006	Letter	D7HD Inspection Report	Linda Clecellio?
00055	7/6/2006	Letter	Sunnyside letter to D7HD	Doyle Beck
00056	7/20/2006	Letter	D7HD letter to Sunnyside	Kellye Eager
00058	8/28/2006	Letter	Benton Eng. Letter to Sunnyside	Michael Lund
00059	9/6/2006	Letter	Sunnyside Letter to Printcraft Press	Doyle Beck
00061	9/20/2006	Letter	Fuller letter to Erickson	Mark Fuller
00063	9/20/2006	Letter	Sunnyside Letter to Printcraft Press	Doyle Beck
00064	9/21/2006	Letter	D7HD letter to Sunnyside	Kellye Eager
00066	11/17/2006	Court Docs	D7HD Litigation file	Various
00219	11/21/2006	Letter	D7HD "Corrected" Letter to Sunnyside	Kellye Eager
00221	12/12/2006	Letter	Erickson letter to Fuller	Lane Erickson
00223	12/13/2006	Letter	Fuller letter to Erickson	Mark Fuller
00226	12/14/2006	Letter	Homer letter to Erickson	Charles Holmer
00228	12/14/2006	Report	Police Report	Joshua Fielding
00232	12/15/2006	Report	Police Report	Jason Sorenson
00236	12/19/2006	Letter	Fuller letter to Erickson	Mark Fuller
00238	1/5/2007	News	Post Register Newspaper Article	Paul Menser
00239	1/24/2007	Report	Energy Lab-Summary and Report	Mindy Reid
00255	1/5/2007	News	Post Register Newspaper Article	Paul Menser
00256	1/26/2007	Application	Application for Water Softener Brine	Travis Waters-Printcraft
306A	2/8/2007	Letter	DEQ letter to D7HD	Willie Teusher
306B	2/9/2007	Letter	D7HD letter to Printcraft Press	Kellye Eager
00307	2/15/2006	Invoices	Receipts, Bills, Invoices-Alternative Sewer	Various
00375	2/1/2007	Permit	Bonneville County Certificate of Occupancy	Steven Serr
	11/20/2006	Affidavit	David Benton Affidavit	David Benton
	11/17/2006	Affidavit	Kirk Woolf Affidavit	Kirk Woolf
	5/14/2007	Report	Sunnyside Sewer Totals, 123	Sunnyside Park Utilities, Inc
		Pictures	Pictures of Printcraft tank overflow	Craig Beck
		Report	Printcraft water usage 2006	Sunnyside Park Utilities, Inc
		Report	Printcraft water usage 2007	Sunnyside Park Utilities, Inc
		Exhibits	Any and All deposition Exhibits	Depositions
		MSDSs	MSDSs provided to Doyle Beck in August by Printcraft	Various Manufacturers
	1/30/07	Affidavit	Travis Peterson Affidavit	Travis Peterson
	12/14/2006	Pictures	Pictures of Printcraft Press interior	Doyle Beck
	9/26/2006	Letter	Erickson letter to Fuller	Lane Erickson
	9/18/2006	Letter	Erickson letter to Sunnyside	Lane Erickson
	3/16/2006	Permit	Temporary Certificate of Occupancy	Mark Fillmore?
		Report	Blocks and Lots-Annexation costs	Sunnyside Park Utilities, Inc

	3/20/2002	Minutes	Consent to adoption of Rules and Regulations	Sunnyside Park Utilities, Inc
	1/23/2006	Agreement	Lease Agreement-J&LB Properties	Travis Waters/Louis Boyle
		Pictures	Pictures of sewage on ground	D7HD
	1/28/05?	Plans	Building plans submitted by CTR Dev.	Design Intelligence LLC
		Report	Breakdown of Sunnyside's costs to fix sewer overload	Sunnyside Park Utilities, Inc
		Invoices	Invoices and receipts for Sunnyside's costs to fix sewer overload	Sunnyside Park Utilities, Inc
	7/14/2005	Application	Commercial Permit Application	CTR Development
		Documents	DEQ Litigation File	Various
		Documents	D7HD Litigation file	Various

Defendant has provided a copy of each identified document to Plaintiff along with all documents responsive to Plaintiff's requests for production.

INTERROGATORY NO. 5: Identify in accordance with the definitions above each and every individual person answering or participating in the answers to each Interrogatory, Requests for Admission, and Requests for Production propounded, specifying, as to each person, the particular discovery request which he or she answers or participates in answering.

RESPONSE TO INTERROGATORY NO. 5: Doyle Beck- all requests; Kirk Woolf- all requests; counsel for Defendant-all requests.

INTERROGATORY NO. 6: Please state the name and last known address and telephone number of each person consulted as an expert witness on your behalf concerning any facts relating to this litigation, and with respect to each, state the facts concerning which he/she has been consulted, the opinion(s) he/she has expressed, and whether or not he/she has issued a written report of any form.

RESPONSE TO INTERROGATORY NO. 6: Defendant has consulted the

following persons as expert witnesses:

1. Michael Lund-Benton Engineering
Address: 550 Linden Dr.
Idaho Falls, ID 83401-4149
Tel.

Facts consulted: Effect of Ink discharges by Printcraft Press on Defendant's septic system; Design and engineering of Defendant's septic system. Effects of discharges of certain chemicals on Defendant's septic system.

Opinions or reports: See Letter of Benton Engineering dated August 28, 2006 provided in response to Plaintiff's Requests for Production.

2. Dr. Kirby Olson-Portage Environmental
Address: 8 Dulce Road
Santa Fe, New Mexico 87508
Tel. (505) 629-9969

Facts consulted: Effect of discharges by Printcraft on Sunnyside's system and the environment.

Opinions or reports: None. Defendant has not yet received any opinions or reports from Dr. Olson. Defendant will provide any such opinions or reports when they are obtained.

3. Dale Stephenson
Boise St. University-Community and Environmental Health
1910 University Drive, mail stop 1835
Boise, Idaho 83725
(208) 426-3795

Facts consulted: Effect of discharges by Printcraft on Sunnyside's system and environment.

Opinions or reports: None. Defendant has not yet received any opinions or reports from Dr. Stephenson. Defendant will provide any such opinions or reports when they are obtained.

REQUEST FOR ADMISSION NO. 1: Please admit that attached to Plaintiff's

Verified Complaint dated December 18, 2006, as Exhibit "A" is a true and correct copy of the Third Party Beneficiary Utility Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit.

REQUEST FOR ADMISSION NO. 2: Please admit that you were a party to the

Third Party Beneficiary Utility Agreement that is described in Request for Admission No. 1 above.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that pursuant to section 10 of the Third Party Beneficiary Utility Agreement described in Request for Admission No. 1 above, Plaintiff is a beneficiary of said Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admit.

REQUEST FOR ADMISSION NO. 4: Please admit that in providing septic/sewer services to any individual or entity under the terms of the Third Party Beneficiary Utility Agreement you are regulated by law.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Admit.

INTERROGATORY NO. 7: Please identify in detail and with particularity each and every state statute, state law and/or state regulation by which you are currently regulated as you provide septic/sewer services to any individual or entity.

RESPONSE TO INTERROGATORY NO. 7: Defendant objects to this request because Plaintiff's request asks for information in violation of the attorney work product privilege.

INTERROGATORY NO. 8: Please identify in detail and with particularity each and every state agency and/or department that holds authority to regulate you as you provide septic/sewer services to any individual or entity.

RESPONSE TO INTERROGATORY NO. 8: Defendant objects to this request because Plaintiff's request asks for information in violation of the attorney work product

privilege.

REQUEST FOR ADMISSION NO. 5: Please admit that attached to Plaintiff's Verified Complaint dated December 18, 2006, is a true and correct copy of the Rules and Regulations which you claim are binding on the parties to this litigation.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Admit.

REQUEST FOR ADMISSION NO. 6: Please admit that the Rules and Regulations identified in Request for Admission No. 5 above are binding upon you.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Admit.

INTERROGATORY NO. 9: Please identify in detail and with particularity each and [every] violation that you allege authorized you to sever the septic/sewer service to Plaintiff.

RESPONSE TO INTERROGATORY NO. 9:

1. Printcraft discharged cooling water, reverse osmosis water, and water softener brine into Sunnyside's sewer system in violation of IDAPA 58.01.03.004.03 and Sunnyside's Rules and Regulations.
2. Printcraft discharged excessive and unusual flows in violation of IDAPA 58.01.03.004 and 58.01.03.007 and Sunnyside's Rules and Regulations.
3. Printcraft discharged pollutants into the underground water of the state of Idaho in violation of IDAPA 58.01.03.012.02 and in violation of Sunnyside's Rules and Regulations.
4. Printcraft discharged the following chemicals in violation of IDAPA, Idaho Code, the Code of Federal Regulations, and Sunnyside's Rules and Regulations:
 - a. On-The Run Plate Cleaner
 - b. RC-791 Finisher
 - c. G101P Developer Working Strength
 - d. G101P Developer Part A
 - e. G101P Developer Part B
 - f. FPC Finisher-Preserver-Cleaner

- g. Flexographic Inks
- h. UV Inks
- i. 3451 Fountain Concentrate
- j. Isopropyl Alcohol
- k. 409 All Purpose Cleaner
- l. #G-L-14 Developer Replenisher
- m. #G-28041 PHOTO Fix
- n. #46987 Performa Plate Developer
- o. Speedy Dry

- 5. Printcraft's failure to report discharge of wastes and chemicals prohibited by the rules and regulations as required by Article III, Section 2 of the Rules and Regulations.
- 6. Printcraft's refusal to install any protective devices as required by Article II, Section 6 of the Rules and Regulations.
- 7. Printcraft's refusal to monitor its discharges as required by Article II, Section 7 of the Rules and Regulations.
- 8. Printcraft continued discharging what Sunnyside defined as "Processed Wastes" even after agreeing to cease such discharges on September 25, 2006.
- 9. Printcraft discharged flows in excess of Sunnyside's sewer system design in violation of applicable IDAPA provisions.

INTERROGATORY NO. 10: Pursuant to the terms and conditions of either or both the Third Party Agreement or the Rules and Regulations identified as Exhibits "A" and "B" to Plaintiff's Verified Complaint, please identify in detail and with particularity each and every circumstance under which you would be require[d] to re-connect Plaintiff's septic/sewer services.

RESPONSE TO INTERROGATORY NO. 10: Printcraft breached the contract, thereby terminating Sunnyside's obligations under the agreement. Therefore there are no possible circumstances under which Sunnyside would be required to re-connect Plaintiff's septic/sewer services under the terms and conditions of the Third Party Agreement or the

Rules and Regulations.

INTERROGATORY NO. 11: Please identify in detail and with particularity each and every individual who is now or who has ever been an officer, director or shareholder of the Defendant from 1996 to the present stating the names, and positions of said persons and the dates any such positions were held.

RESPONSE TO INTERROGATORY NO. 11: Defendant was organized on March 29, 2002. With regards to individuals Defendant responds as follows:

Kirk Woolf- President, Director, Stockholder

Doyle Beck-Secretary/Treasurer, Director, Stockholder

Sunnyside Industrial and Professional Park, LLC-stockholder

INTERROGATORY NO. 12: For the ten (10) years prior to the date this action was filed, please identify in detail and with particularity any and all litigation which you, or your officers have ever been involved, setting forth the name of the case(s), the names of all parties involved in said case(s), the state and county in which said case(s) was filed, and the case number associated with said case(s).

RESPONSE TO INTERROGATORY NO. 12: Sunnyside Park Utilities has not been involved in any litigation. Sunnyside Park Utilities' officers have not been involved in any litigation as officers or directors of Sunnyside Park Utilities. Defendant objects to the remainder of this interrogatory as irrelevant.

INTERROGATORY NO. 13: Please identify in detail and with particularity the type and kind of septic/sewer system that existed and to which Plaintiff was connected in June 2006, setting forth the size of the septic/sewer system, its daily maximum volume or flow

capacity and the number of sewer connections that existed to said septic/sewer system including Plaintiff's sewer connection on June 2006.

RESPONSE TO INTERROGATORY NO. 13: Defendant operated a central septic system with a 1,000 gallon tank and a drainfield. The central septic system had a capacity of 500 gallons per day average. There were 18 connections to the central septic system in June of 2006 including Plaintiff's connection.

INTERROGATORY NO. 14: From 1996 to the present, please describe in detail and with particularity each and every type of installation, alteration, change, repair, addition, or expansion of the septic/sewer system from which Plaintiff was severed, and in doing so set forth the date any such occurred, and the persons or entities who authorized the occurrence and the persons or entities who actually carried out the installation, alteration, change, repair, addition, or expansion.

RESPONSE TO INTERROGATORY NO. 14: Defendant responds as follows:

1. In August-September of 1996 Defendant installed a 1,000 gallon tank and a drainfield. Such installation was authorized by District Seven Health Department. The installation was carried out by Kelly Clay Construction.
2. In July of 2006 Defendant enlarged the drainfield and installed two additional 1,500 gallon tanks. Such installation was authorized by District Seven Health Department. The installation was carried out by Kelly Clay Construction.

INTERROGATORY NO. 15: Please identify in detail and with particularity each and every written notice or correspondence directed to you or to your officers from 1996 to the present from any Idaho state or county department or agency concerning the

septic/sewer system from which Plaintiff was severed setting for the content of the written notice or correspondence and the written response provided by you or your officers if any.

RESPONSE TO INTERROGATORY NO. 15: Defendant responds as follows:

1. Letter dated September 19, 1996 from DEQ.
2. Letter dated April 15, 2002 from D7HD.
3. Letter dated June 28, 2006 from D7HD.
4. Response dated July 6, 2006 to D7HD
5. Letter dated July 20, 2006 from D7HD
6. Letter dated August 23, 2006 to D7HD's attorney
7. Letter dated September 11, 2006 from D7HD
8. Letter dated September 13, 2006 from D7HD's attorney
9. Letter dated September 21, 2006 from D7HD
10. Letter dated September 21, 2006 from D7HD's attorney
11. Letter dated September 28, 2006 to D7HD
12. Letter dated October 2, 2006 from D7HD
13. Letter dated October 5, 2006 from D7HD
14. Letter dated October 27, 2006 to D7HD
15. Letter dated November 9, 2006 from D7HD's attorney
16. Letter dated November 21, 2006 from D7HD

REQUEST FOR ADMISSION NO. 7: Please admit that you severed Plaintiff's sewer connection to the septic/sewer system.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Admit.

REQUEST FOR ADMISSION NO. 8: Please admit that in September 2005 you received a payment in the sum of \$1,800.00 as a sewer connection fee for the premises occupied by Plaintiff.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admit. CTR Development paid the sum of \$1,800.00 for one of the three sewer connections for the premises. Payment for the other two sewer connections has not been made.

REQUEST FOR ADMISSION NO. 9: Please admit that you accepted the connection fee described in Request for Admission No. 8 above.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Admit.

REQUEST FOR ADMISSION NO. 10: Please admit that the term "processed waste" is not defined in the Rules and Regulations which are attached to Plaintiff's Verified Complaint as Exhibit "B."

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Admit that processed waste is not directly defined. However, under the Third Party Agreement Sunnyside is **only** obligated to accept sewage. Sewage is defined in the Rules and Regulations as having the same meaning as blackwaste/blackwater. Any other discharges that are not blackwaste/blackwater would be considered "processed waste."

INTERROGATORY NO. 16: Please identify in detail and with particularity each and every occupant of Sunnyside Industrial Park for which you provide sewer service, setting forth the name of said occupant, the location or address of said occupant, the type of business said occupant carries on, and the number of employees said occupant maintains on its premises during regular working hours.

RESPONSE TO INTERROGATORY NO. 16: Defendant responds as follows:

1. BECO/Phenix:
Address: 3655 Professional Way
Type of Business: Construction Store
Number of employees: 7-9
2. Mountain Truss
Address: 3655 Professional Way
Type of Business: Truss Store
Number of Employees: 12-18
3. Connective Computer Cabling:
Address: 377 South American Way
Type of Business: Computer store
Number of employees: 1-5
4. RHS
Address: 3767 Professional Way
Type of Business: Disabled care and training
Number of Employees: 20-30
5. Eight Plex Building
 - a. Vacant
Address: 3821 Professional Way #10
Type of Business:
Number of Employees: 1-3
 - b. Sara Lee
Address: 3821 Professional Way #11
Type of Business: Bread and Pastry Store
Number of Employees: 1-3
 - c. Nitro Cision
Address: Professional Way #12
Type of Business: Research and Development
Number of Employees: 1-3
 - d. Vacant
Address: Professional Way #13
Type of Business:
Number of Employees: 1-2

- e. Vacant
Address: Professional Way #14
Type of Business:
Number of Employees: 1-2
 - f. PC Recyclers
Address: Professional Way #15
Type of Business: Computer recycling store
Number of Employees: 1-3
 - g. NorthStar
Address: Professional Way #16
Type of Business: Heating and Air-conditioning store
Number of Employees: 1-3
 - h. KW Construction
Address: Professional Way #17
Type of Business: Construction Store
Number of Employees: 1-2
6. StarWest
Address: 4003 Professional Way, Ste. "A"
Type of Business
Number of Employees: 10-25
7. Skyview Electric, Inc.
Address: 4003 Professional Way Ste. B
Type of Business: Electrical Construction
Number of Employees: 3-10
8. Ideal Excavation
Address: 3821 Professional Way
Type of Business: Excavation Company
Number of Employees: 6-15
9. Now Disc
Address: 3875 South American Way, Idaho Falls, Idaho
Type of Business: Computer Disc Manufacturer
Number of Employees: 15-22
10. Waxie
Address: 3839 South American Way, Idaho Falls, Idaho

Type of Business: Janitorial Supplies Store
Number of Employees: 2-5

INTERROGATORY NO. 17: Please identify in detail and with particularity each and every oral or written conversation, correspondence, or inquiry with Plaintiff that you had which occurred prior to Plaintiff's occupying the building located within Sunnyside Industrial Park that identified to you the type of business Plaintiff would carry on and the number of employees Plaintiff would maintain on its premises during regular working hours.

RESPONSE TO INTERROGATORY NO. 17: Defendant responds as follows:

1. CTR Development, as Printcraft's agent, provided Defendant with a copy of the plans.
2. CTR Development, as Printcraft's agent informed Defendant that there would be 30 employees on the premises.

REQUEST FOR ADMISSION NO. 11: Please admit that the term "processed waste" is not defined in any applicable state statute or regulation which applies to the sewer service you provided to Plaintiff.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: "Processed waste water" is defined in United States Effluent guidelines and standards found in 40 C.F.R. §401.11.

REQUEST FOR ADMISSION NO. 12: Without limiting the applicability [of] any other statutes, laws or rules, please admit that IDAPA 58, Title 01, Chapter 03 (58.01.03) – "Individual/Subsurface Sewage Disposal Rules" apply to the sewer system you maintain within the Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Admit.

REQUEST FOR ADMISSION NO. 13: Please admit that the Third Party Beneficiary Utility Agreement described in Request for Admission No. 1 above was recorded in Bonneville County, Idaho.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Admit.

REQUEST FOR ADMISSION NO. 14: Please admit that in June 2006, Plaintiff was not the only commercial building connected to the sewer system you maintain in the Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Admit.

REQUEST FOR ADMISSION NO. 15: Please admit that you cannot quantify by number of gallons per day the volume of sewage Plaintiff discharged into the septic/sewer system you maintain in the Sunnyside Industrial Park in June 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Deny. Defendant can quantify approximately the number of gallons per day discharged by Printcraft based upon difference in flows between the system before and after connection and the amount of water taken into the building by Printcraft.

REQUEST FOR ADMISSION NO. 16: Please admit that you cannot quantify the volume of sewage by number of gallons per day Plaintiff discharged into the septic/sewer system you maintain in the Sunnyside Industrial Park at any time after June 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Deny. Defendant can quantify approximately the number of gallons per day discharged by Printcraft based upon difference in flows between the system before and after connection and the amount

of water taken into the building by Printcraft.

REQUEST FOR ADMISSION NO. 17: Please admit that the septic/sewage system you maintain within the Sunnyside Industrial Park was not adequate for the occupants of Sunnyside Industrial Park in June 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Deny. The septic/sewage system was adequate for the occupants of Sunnyside Industrial Park provided that all occupants complied with Sunnyside's Rules and Regulations. The septic system was not adequate to accommodate flows in violation of Sunnyside's Rules and Regulations or in excess of the Third Party Beneficiary Agreement.

REQUEST FOR ADMISSION NO. 18: Please admit that the septic/sewage system you maintain within the Sunnyside Industrial Park was not adequate for the occupants of Sunnyside Industrial Park after June 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Deny. The septic/sewage system was adequate for the occupants of Sunnyside Industrial Park provided that all occupants complied with Sunnyside's Rules and Regulations. The septic system was not adequate to accommodate flows in violation of Sunnyside's Rules and Regulations or in excess of the Third Party Beneficiary Agreement.

REQUEST FOR ADMISSION NO. 19: Please admit that in June 2006, the septic/sewage system you maintain within the Sunnyside Industrial Park failed.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Deny. The system experienced a temporary overload as a result of the illegal and excessive discharges coming from Printcraft Press.

REQUEST FOR ADMISSION NO. 20: Please admit that you do not know in number of gallons per day the exact maximum sewer flow Plaintiff is allowed to discharge into the septic/sewer system you maintain at Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: Deny. Plaintiff is not allowed to discharge any gallons per day into the sewer system because of Plaintiff's illegal activities. When connected to the system Printcraft was entitled to discharge all of its "sewage" as defined by the Rules and Regulations, but no other substances or processed waste water.

INTERROGATORY NO. 18: Please identify in detail and with particularity in number of gallons per day the exact maximum sewer flow Plaintiff was allowed to discharge into the septic/sewer system you maintain at Sunnyside Industrial Park prior to your disconnecting Plaintiff from said septic/sewer system, specifically identifying how you arrived at such a number and specifically identifying all supporting authority that exists for your calculation of said number.

RESPONSE TO INTERROGATORY NO. 18: When connected to the system Printcraft was entitled to discharge all of its "sewage" as defined by the Rules and Regulations but no other substances.

INTERROGATORY NO. 19: Please identify in detail and with particularity each and every written or oral communication you ever provided to Plaintiff where you communicated in any way or manner the exact maximum number of gallons per day Plaintiff was allowed to discharge into the septic/sewer system you maintain at Sunnyside Industrial Park prior to disconnecting Plaintiff from said sewer system.

RESPONSE TO INTERROGATORY NO. 19: None. There is no exact maximum number of gallons per day Plaintiff was allowed to discharge. Plaintiff was allowed to discharge all of its "sewage" as defined in the Rules and Regulations but no other substances. Plaintiff was informed of that fact on multiple occasions in June, July, August, and September, 2006.

REQUEST FOR ADMISSION NO. 21: Please admit that there are occupants of Sunnyside Industrial Park other than Plaintiff who are not currently connected to the septic/sewer system you maintain.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Admit.

INTERROTORARY NO. 20: Please identify in detail and with particularity each and every occupant of Sunnyside Industrial Park other than Plaintiff who are not currently connected to the septic/sewer system you maintain, and describe with particularity the reasons and/or circumstances as to why said occupant(s) are not connected and what sewer system or services said occupant(s) rely on for their sewer service.

RESPONSE TO INTERROGATORY NO. 20: Defendant responds as follows:

1. Storage units and a house owned by Gary Ratliff. This property has its own sewer system and may be connected to Idaho Falls City water.
2. Miskin Scraper Works- This property is connected to the City of Idaho Falls. The owner of this property had an agreement with the City of Idaho Falls whereby it was allowed to connect to the City's sewer facilities without annexation.
3. Corporate Express-This property has its own septic system. The owners of the property specifically informed Sunnyside as to their needs prior to connection.

Sunnyside was unable to meet their sewage needs for the property and so the owner decided to install its own septic system with sufficient capacity for its needs.

REQUEST FOR ADMISSION NO. 22: Please admit that there are currently more than nine (9) building occupants within Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Admit.

REQUEST FOR ADMISSION NO. 23: Please admit that in August 1996 a 1000 gallon septic tank was installed in Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Admit.

REQUEST FOR ADMISSION NO. 24: Please admit that the 1000 gallon septic tank identified in Request for Admission No. 23 was the same tank to which Plaintiff was connected prior to your severing its sewer service connection.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Deny. Plaintiff was connected to Defendant's sewer lines, and was not directly connected to any septic tank. Further at the time Plaintiff's sewer connection was severed there were three septic tanks installed with a total of 4000 gallons.

REQUEST FOR ADMISSION NO. 25: Please admit that the 1000 gallon septic tank identified in Request for Admission No. 23 was the septic/sewer system that failed in June 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Deny as stated. The 1000 gallon septic tank experienced a temporary overload when Plaintiff discharged illegal substances and excessive quantities of flow in June of 2006.

REQUEST FOR ADMISSION NO. 26: Please admit that you never intended to

install a large soil absorption system in Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Deny. Defendant intends to install a large soil absorption system only if discharges of sewage approaches 2,499 gallons per day. If discharges of sewage remains under 2,499 gallons per day, then Plaintiff is correct that Defendant never intends to install a large soil absorption system.

REQUEST FOR ADMISSION NO. 27: Please admit that after the June 2006 failure of the septic/sewer system at Sunnyside Industrial Park, you installed a second 1000 gallon tank as a part of the septic/sewer system.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Deny. Defendant installed 2 additional 1,500 gallon tanks as a part of the septic system.

REQUEST FOR ADMISSION NO. 28: Please admit that after you installed a second 1000 gallon tank as a part of the septic/sewer system at Sunnyside Industrial Park your intention was never to allow the total sewage discharges into the system to exceed the sum of 2,500 gallons per day.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Deny. See response to request for admission No. 26.

REQUEST FOR ADMISSION NO. 29: Please admit that you would be required to either connect to city sewer services or to install a large soil absorption system at Sunnyside Industrial Park if the total sewer discharges into the septic/sewer system were to exceed the sum of 2,500 gallons per day.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Deny. Defendant may be able to pursue other upgrades to the system in addition to connection to the City or

installation of a large soil absorption system.

INTERROGATORY NO. 21: Please identify in detail and in particularity in number of gallons per day the exact maximum sewer flow all occupants of Sunnyside Industrial Park are currently allowed to discharge into the septic/sewer system you maintain at Sunnyside Industrial Park, specifically identifying how you arrived at such a number and specifically identifying all supporting authority that exists for your calculation of said number.

RESPONSE TO INTERROGATORY NO. 21: The occupants of Sunnyside Industrial Park are currently allowed to discharge all of their sewage into the septic system. There is no exact maximum sewer flow.

INTERROGATORY NO. 22: Please identify in detail and with particularity each and [every] method, device, or system you employ to monitor the exact number of gallons per day of sewer discharge the occupants who are currently connected to the Sunnyside Industrial Park septic/sewer system are discharging.

RESPONSE TO INTERROGATORY NO. 22: FL16 Flow logger, Global Water Instruments, Inc.

REQUEST FOR ADMISSION NO. 30: Please admit that you blame Plaintiff for the June 2006 failure of the septic/sewer system you maintain in Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Admit.

INTERROGATORY NO. 23: Please identify in detail and with particularity each and [every] item of evidence, including documents, reports, photographs, drawings, and other tangible evidence as well as any testimony you anticipate introducing at any hearing

or trial that supports your allegation that Plaintiff is in fact the cause of the June 2006 failure of the septic/sewer system you maintain in Sunnyside Industrial Park.

RESPONSE TO INTERROGATORY NO. 23: Defendant responds as follows:

1. Ralph Schoneman will testify regarding red ink in the overflow and strange chemical smell coming from overflow.
2. Terry Luzier will testify regarding ink in the overflow.
3. Pictures taken by Kellye Eager, attached in Defendant's responses to Plaintiff's Requests for Production.
4. Defendant's water meter records, attached to Defendant's responses to Plaintiff's Requests for Production.
5. Defendant's sewer flow records, attached to Defendant's responses to Plaintiff's Requests for Production.

INTERROGATORY NO. 24: Please identify in detail and with particularity each and [every] item of evidence, including documents, reports, photographs, drawings, and other tangible evidence as well as any testimony you anticipate introducing at any hearing or trial that supports your allegation that Plaintiff is responsible for any of the damages you claim in your Counterclaim against Plaintiff.

RESPONSE TO INTERROGATORY NO. 24: See response to Interrogatory No. 23.

INTERROGATORY NO. 25: Should you deny any portion of Requests for Admission, Nos. 1-30 listed above, please set forth in detail and with particularity the specific basis of your denial and each and every fact that you claim supports your denial

for each separate Request for Admission so denied.

RESPONSE TO INTERROGATORY NO. 25: See responses to each applicable denial.

REQUEST FOR PRODUCTION NO. 1: Please produce true and correct copies of all documents, correspondence, electronic recordings, video recordings and/or audio recordings, and/or any other documents which you have within your possession or have identified, referenced, described or discussed in your responses to Interrogatory Nos. 1 through 25 above. With respect to each such document, you are requested to indicate the interrogatory or interrogatories or request for admission to which each document is responsive.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: See Documents attached.

REQUEST FOR PRODUCTION NO. 2: Please produce true and correct copies of each and every document which you intend to introduce into evidence at any hearing or trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Defendant has not yet determined what documents will be introduced into evidence at trial. See all Documents attached.

REQUEST FOR PRODUCTION NO. 3: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that supports the allegations you set forth in your Counterclaim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See documents

attached.

REQUEST FOR PRODUCTION NO. 4: Please produce true and correct copies of each and every document that you have received from or produced to any State department or agency that in any way relates to or references the septic/sewer system located within the Sunnyside Industrial Park from which you severed Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See documents attached.

REQUEST FOR PRODUCTION NO. 5: Please produce true and correct copies of each and every local and/or state license, permit or certificate of authority that exists that in any way is related to the septic/sewer system located within the Sunnyside Industrial Park from which you severed Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: See documents attached.

REQUEST FOR PRODUCTION NO. 6: Please produce true and correct copies of each and every state and federal tax return you have filed from 1996 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Defendant objects to this request as irrelevant. Sunnyside Park Utilities, Inc., was organized on March 29, 2002.

REQUEST FOR PRODUCTION NO. 7: Please produce true and correct copies of any judgment, document, record, Court decree, or so forth for any law suit, legal action, administrative proceeding and/or legal proceeding in which you have been a party from 1996 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: See documents

attached.

REQUEST FOR PRODUCTION NO. 8: Please produce and specifically identify true and correct copies of all documents, invoices, receipts, checks, statements, or the like which you believe supports the claim for damages you set forth in your Counterclaim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: See documents attached.

REQUEST FOR PRODUCTION NO. 9: Please produce and specifically identify true and correct copies of all documents, invoices, receipts, permits, inspections, statements, reports or the like that evidence the creation, repair, renovation, extension, or expansion of the septic/sewer system you maintain in Sunnyside Industrial Park from 1996 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: See documents attached.

REQUEST FOR PRODUCTION NO. 10: Please produce and specifically identify true and correct copies of any and all documents, records, reports, summaries, listings, spreadsheets, or the like you have of the exact number of gallons of discharge all of the occupants of Sunnyside Industrial Park who were connected to the septic/sewer system from 2002 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: See documents attached.

REQUEST FOR PRODUCTION NO. 11: Please produce and specifically identify true and correct copies of any and all documents, records, reports, summaries, listings,

spreadsheets, or the like of the exact number of employees each occupant of Sunnyside Industrial Park who were connected to the septic/sewer system had from 2002 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: See documents attached.

REQUEST FOR PRODUCTION NO. 12: Please produce and specifically identify true and correct copies of any and all documents, records, reports, summaries, listings, spreadsheets or the like of the occupants who were connected to the septic/sewer system you maintain in the Sunnyside Industrial Park at the time the septic/sewer system failed on June 2006.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: See documents attached.

REQUEST FOR PRODUCTION NO. 13: Please produce true and correct copies of any and all documents, records, reports, summaries, listings, spreadsheets, or the like that show, or identify or evidence specifically the exact number of gallons of discharge per occupant at the time of the June 2006 failure of the septic/sewer system you maintain in the Sunnyside Industrial Park.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: See documents attached.

REQUEST FOR PRODUCTION NO. 14: Please produce true and correct copies of all plans, specifications, blueprints, drawings, schematics, or any other type or kind of such documents you allege to have received from any person(s) or entity(ies) concerning

the creation, construction, or installation of the building or any portion, partition, or system of the building now occupied by Printcraft Press.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: See documents attached.

REQUEST FOR PRODUCTION NO. 15: Please produce true and correct copies of each and every type or kind of written correspondence of any sort whatsoever you have either sent to or received from any of the occupants who are now or who have ever been connected to the septic/sewer system at issue in this cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: See documents attached.

REQUEST FOR PRODUCTION NO. 16: Please produce true and correct copies of each and every document you ever provided to any of the occupants who are now or who have ever been connected to the septic/sewer system at issue in this cause that sets forth any limitations that you allege exist for said septic/sewer system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: See documents attached.

REQUEST FOR PRODUCTION NO. 17: Please produce true and correct copies of each and every document you claim supports you allegations of misrepresentations or fraud by Plaintiff or any persons associated with Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: See documents attached.

REQUEST FOR PRODUCTION NO. 18: Please produce true and correct copies

of any and all documents you have in your possession that were prepared by, used by, signed by or relied upon by Benton Engineering with regard to the septic/sewer system at issue in this cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: See documents attached.

REQUEST FOR PRODUCTION NO. 19: Please produce true and correct copies of any and all permit(s) you obtained from any source concerning the collection system at issue in this cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: See documents attached.

REQUEST FOR PRODUCTION NO. 20: Please produce true and correct copies of any and all permit(s) you obtained the septic/sewer system at issue in this cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: See documents attached.

REQUEST FOR PRODUCTION NO. 21: Please produce true and correct copies of all plans, specifications, blueprints, drawings, schematics, or any other type or kind of such documents you allege to have received from any person(s) or entity(ies) concerning the creation, construction, or installation of any and all buildings that currently discharge into the septic/sewer system services you provide within the Sunnyside Industrial Park subdivision.

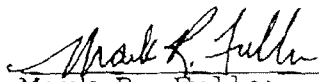
RESPONSE TO REQUEST FOR PRODUCTION NO. 21: See documents attached.

Idaho Department of Environmental Quality or Bonneville County concerning the
septic/sewer system services you provide within Sunnyside Industrial Park subdivision.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22: See documents attached.

DATED THIS 21 day of May, 2007

FULLER & CARR


Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of the following described pleading or document on the attorney listed below a true and correct copy thereof on this 21 day of May, 2007:

Document Served:

DEFENDANT'S RESPONSE TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES, REQUESTS
FOR ADMISSION AND REQUESTS FOR
PRODUCTION

Attorney Served:

Lane Erickson, Esq.
Patrick N. George, Esq.
RACINE, OLSEN, NYE, BUDGE & BAILEY
PO BOX 1391
Pocatello, Idaho 83204-1391

U.S. Mail
X Facsimile
Hand Delivery



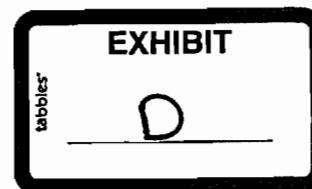
Mark R. Fuller
FULLER & CARR

MARK R. FULLER (ISB No. 2698)
 DANIEL R. BECK (ISB No. 7237)
 FULLER & CARR
 410 MEMORIAL DRIVE, SUITE 201
 P.O. Box 50935
 IDAHO FALLS, ID 83405-0935
 TELEPHONE: (208) 524-5400

ATTORNEY FOR DEFENDANT/COUNTER CLAIMANT SUNNYSIDE PARK UTILITIES, INC. AND
 SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
 DISTRICT OF THE STATE OF IDAHO IN AND FOR
 THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	
v.)	DEFENDANTS' THIRD SUPPLEMENTAL
)	EXPERT WITNESS DISCLOSURE
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
SUNNYSIDE PARK OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation, SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
)	
Defendants.)	
)	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
and SUNNYSIDE INDUSTRIAL AND)	
PROFESSIONAL PARK, LLC, an)	
Idaho limited liability)	
corporation.)	
)	
Counterclaimants,)	
v.)	
)	
PRINTCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
)	
Counter-defendants.)	
)	



51185

COMES NOW, the Defendant, Sunnyside Park Utilities, Inc., an Idaho Corporation ("Sunnyside"), through its counsel of record, Mark R. Fuller of Fuller & Carr, and files Defendant's Supplemental Expert Witness Disclosure, pursuant to the Order and Notice Setting Jury Trial entered July 8, 2008. Defendant hereby discloses the following expert witnesses which Defendant may call to testify in this matter:

1. Kirby Olson of Portage Environmental
8 Dulce Road
Santa Fe, New Mexico 87508
Tel. (505)629-9969

SUBJECT MATTER: Dr. Olson is expected to testify regarding the nature of defendant's sewer system; the effect chemicals and other substances discharged by Printcraft would have on Sunnyside's sewer system; and the effect chemicals and other substances discharged by Printcraft would have on the general public. Report previously submitted. Testimony will be in accord with the opinions stated in her deposition taken April 30, 2008.

2. Michael Lund of Benton Engineering
550 Linden Dr.
Idaho Falls, Idaho 83401-4149

SUBJECT MATTER: Mr. Lund is expected to testify regarding his opinions on the design and engineering of defendant's sewer system; the effect chemicals and other substances discharged by Printcraft would have on Sunnyside's sewer system if they were discharged into Sunnyside's sewer system; and the effect chemicals and other substances discharged by Printcraft would have on the general public if they were discharged into Sunnyside's sewer system. Report previously submitted. Testimony will be in accord with his deposition taken August 1, 2007 in IDEQ proceeding.

3. Daniel Sharp of Sharp Engineering
14444 South 1st East
Idaho Falls, Idaho 83404
208-357-0846

SUBJECT MATTER: Mr. Sharp is expected to testify regarding his opinions on the design and engineering of the defendant's sewer system, the location of the drain-field, the characteristics of the soil in the drain-field area, and the capacity of the septic system. Mr. Sharp will testify regarding the Large Soil Absorption System Application submitted to Idaho Department of Environmental Quality and actions taken by Sunnyside Park Utilities, Inc., to enlarge its system. Mr. Sharp will testify

regarding Printcraft's failure to properly maintain and operate its above ground storage tank system and the costs to connect Printcraft's building to the City of Idaho Falls sewage system.

4. Tyler Bowles of Lewis, Bowles & Associates, LLC
1165 Fox Farm Road
Logan, Utah 84321
(435)512-0707

SUBJECT MATTER: Mr. Bowles is expected to testify as to his opinions regarding the valuation of Printcraft Press, Inc., based upon records produced by Plaintiff to assist the jury in awarding appropriate punitive damages. Mr. Bowles will also testify regarding his opinions on damages resulting to defendants from acts of Printcraft, its officers, agents, and employees. Mr. Bowles will also testify regarding his opinions on the damages claimed by Plaintiff and the damages which could have been mitigated by Plaintiff.

5. Doyle Beck of Beco Construction, Inc.
3655 Professional Way
Idaho Falls, ID
(208)529-9891

SUBJECT MATTER: Mr. Beck is expected to testify regarding the construction and operation of the septic system. Mr. Beck will testify consistently with the testimony provided in his two previous depositions. Mr. Beck will testify regarding his opinions of Sunnyside's septic system complying with Idaho Code and IDAPA regulation and his opinion that the actual flow of wastewater does not exceed the permitted flow capacity.

6. Jerald A. Finlinson
Contact through counsel

SUBJECT MATTER: Mr. Finlinson will testify regarding construction, permitting and inspection of the septic system in the Sunnyside Industrial and Professional Park subdivision. Mr. Finlinson will also testify regarding review and approval of subdivision plats, approval of septic permit applications and the issuance of septic permits. Mr. Finlinson will also testify in accordance with his affidavit which is provided herewith.

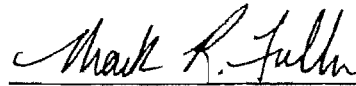
7. Richard Bly
Contact through counsel

SUBJECT MATTER: Mr. Bly will testify regarding the drafting of the letter dated April 15, 2002, attached as Exhibit F to Plaintiff's Third Amended Complaint, and will state his opinion as to the enforceability of such letter by District Seven Health Department. Mr. Bly will also testify regarding his opinion as to Sunnyside's septic system complying with Idaho law and applicable IDAPA regulations. Mr. Bly will also testify regarding his opinion of the waste flows from custom printing businesses.

FROM

(MON) DEC 15 2008 16:06/ST. 16:04/No. 75301924ES P 5

DATED this 15th day of December, 2008.



Mark R. Fuller
Fuller & Carr

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorney listed below on this 15th day of December, 2008:

Document Served:

DEFENDANT'S THIRD SUPPLEMENTAL
EXPERT WITNESS DISCLOSURE¹

Attorney Served:

Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery

Bryan Smith
SMITH, DRISCOLL & ASSOCIATES
P.O. Box 50731
Idaho Falls, ID 83405-0731
Fax: 529-4166

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery



Mark R. Fuller
FULLER & CARR

MARK R. FULLER (ISB No. 2698)
 DANIEL R. BECK (ISB No. 7237)
 FULLER & CARR
 410 MEMORIAL DRIVE, SUITE 201
 P.O. Box 50935
 IDAHO FALLS, ID 83405-0935
 TELEPHONE: (208) 524-5400

ORIGINAL

ATTORNEY FOR DEFENDANT SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC, AND
 SUNNYSIDE PARK UTILITIES, INC.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
 DISTRICT OF THE STATE OF IDAHO IN AND FOR
 THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an)
 Idaho corporation,)

Case No. CV-06-7097

Plaintiff,)
 v.)

AFFIDAVIT OF JERALD A.
 FINLINSON

SUNNYSIDE PARK UTILITIES,)
 INC., an Idaho corporation,)
 SUNNYSIDE PARK OWNERS)
 ASSOCIATION, INC., an Idaho)
 corporation, SUNNYSIDE)
 INDUSTRIAL AND PROFESSIONAL)
 PARK, LLC, an Idaho limited)
 liability corporation, DOYLE)
 BECK, an individual, and KIRK)
 WOLF, an individual.)

Defendants.)

SUNNYSIDE PARK UTILITIES,)
 INC., an Idaho corporation.)

Counterclaimant,)
 v.)

PRINCRAFT PRESS, INC., an)
 Idaho corporation, and TRAVIS)
 WATERS, an individual.)

Counter-defendants.)

STATE OF IDAHO)
) ss.
County of Bonneville)

Jerald A. Finlinson, being first duly sworn upon his oath, states and alleges as follows:

1. Affiant is a resident of Bonneville County, State of Idaho and executes this Affidavit upon his personal knowledge.

2. Affiant is over the age of 18 and is competent to testify.

3. Affiant was employed by District Seven Health Department, now known as Eastern Idaho Public Health District as an Environmental Health Specialist. Affiant's responsibilities included review and approval of subdivision plats, approval of Septic Permit Applications, the completion of Septic System Inspection Reports and the issuance of Septic Permits.

4. During August, 1996, Affiant reviewed the Sewer Application submitted by Sunnyside Industrial and Professional Park, LLC. A copy of that sewer application is attached hereto as Exhibit "A". The handwriting on page 1 of Exhibit "A", "1 or 2 commercial office buildings" is my handwriting and was included by me to explain that one or two commercial office buildings were currently under construction on the proposed subdivision. The lighter handwriting on page 3 of Exhibit "A" is my handwriting. All of the handwriting on page 5 of Exhibit "A" is my handwriting. The drawing on page 6 of Exhibit "A" showing the location of the tank and drain field was drawn by me, and shows the anticipated

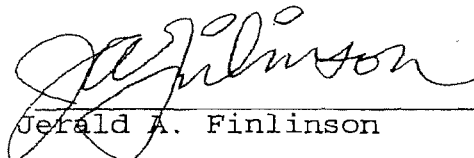
connection to the subdivision sewer line located under Professional Way at the indicated manhole.

5. The Septic Permit marked as Exhibit "B" was prepared by the Affiant. The type written language "For: at least 300 GalPerDay(1 or 2 bldgs)" was written by me to establish that the septic tank was to have a capacity of no less than 300 gallons per day for no less than one or two buildings, which were then being constructed.

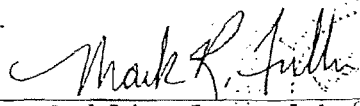
6. On or about August 23, 1996, Affiant completed an inspection of the septic system which had been installed by Sunnyside Industrial and Professional Park pursuant to the permit attached as Exhibit "B". A copy of such Inspection Report is attached hereto as Exhibit "C". The drawings set forth on Exhibit "C" were prepared by Affiant to illustrate the constructed septic system and to establish that an expansion of the system was anticipated. The notation "stub for future" was included by Affiant to establish that future expansions were expected beyond the minimum tank quantities set forth on the Septic Permit, and the minimum drain field disposal area set forth on the permit.

7. Further this Affiant sayeth not.

DATED this 13 day of May, 2008.


Gerald A. Finlinson

SUBSCRIBED AND SWORN to before me this 13 day of May, 2008.


Notary Public for Idaho

375

51192

FROM

(MON) DEC 15 2008 16:06/ST. 16:04/No. 7530192485 P 10

Residing at: Idaho Falls
My Commission Expires: 06-09-09

376

S 1193

FROM

(MON) DEC 15 2008 16:06/ST. 16:04/NO. 7530192465 P 11

DISTRICT SEVEN HEALTH DEPARTMENT
SEWER APPLICATION

COUNTY

Shaded Area - OFFICE USE ONLY

FEE PAID Y/N
CDP #

SITE CONDUCTED () APP () DISAPP

EHS #

TRAVEL TIME

DATE

ON-SITE TIME

NAME <u>Sunnyside Industrial Professional Park LLC</u>	PHONE	MAILING ADDRESS STREET/P.O. BOX CITY	STATE	ZIP
PROPERTY ADDRESS STREET CITY	ZIP	ORIGINAL OWNER'S NAME		
		LOT SIZE (ACRES) <u>5</u>		
LEGAL DESCRIPTION: TOWNSHIP <u>2N</u> RANGE <u>37E</u> SECTION <u>36</u> 1/4 SECTION <u>NW</u> SUBDIVISION <u>Sunnyside Industrial Professional Park LLC</u> LOT # <u>754</u> BLOCK # <u>1</u> (to South of)				

BRIEF DIRECTIONS TO PROPERTY:

South and adjacent to Sunnyside Industrial Professional Park Development

TYPE OF USE	# BEDROOMS	TYPE OF INSTALLATION	WATER SUPPLY	PROPOSED DISPOSAL SYSTEM
() SINGLE FAMILY		() NEW	() PRIVATE	(X) DRAINFIELD () PIT
() MULTIPLE FAMILY	# EMPLOYEES	() REPLACEMENT	() PUBLIC	() ABSORPTION BED
(X) COMMERCIAL			SYSTEM NAME	() BASIC ALTERNATIVE
() OTHER				() COMPLEX ALTERNATIVE

*Additional information may be needed

IF COMMERCIAL/OTHER EXPLAIN

1 or 2 commercial office buildings

PLEASE COMPLETE THE GEOLOGICAL INFORMATION

HIGHEST NORMAL GROUNDWATER DEPTH <u>75</u> FT.	DEPTH TO BEDROCK <u>30</u>	ROCK OUTCROPS () YES (X) NO
DESCRIBE SOIL (AT PROPOSED DEPTH OF DRAINFIELD) <u>Sandy Gravel</u>	() HILLSIDE () FLAT	
NEAREST: SURFACE WATER <u>350'</u> WELL <u>100'</u> SEPTIC <u>6'</u>		

The information provided on this application is accurate to the best of my knowledge. I understand that any false statements may result in disapproval of this permit. If this subsurface sewage disposal installation is constructed by anyone other than the home/landowner or a licensed septic installer, the installation will not be inspected or approved. Section 1-3006.01 - 1-3007.01.

I am the: Landowner

Licensed Septic Installer Kelly Clay
Installer License # 17750

Building Contractor

I hereby authorize the health authority to have access to this property for the purpose of performing the requested services and I certify that all the above information is accurate.

APPLICANT SIGNATURE

DATE 8-15-96

377

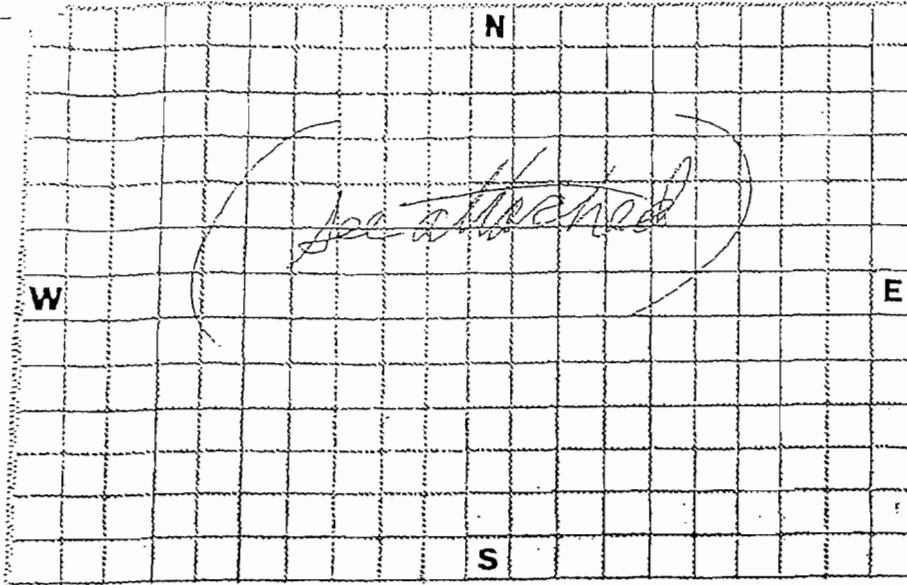
S1194

EXHIBIT A

DIAGRAM OF PROPERTY

FURTHER INFORMATION TO BE CONSIDERED:

1. Indicate the distance to adjacent property owner's well and sewage disposal system.
2. Show rock out-crop location.
3. Location of all buildings, corrals, etc. (existing or proposed).
4. Indicate any easements or right of ways if known.
5. Dwelling location from property lines if known.



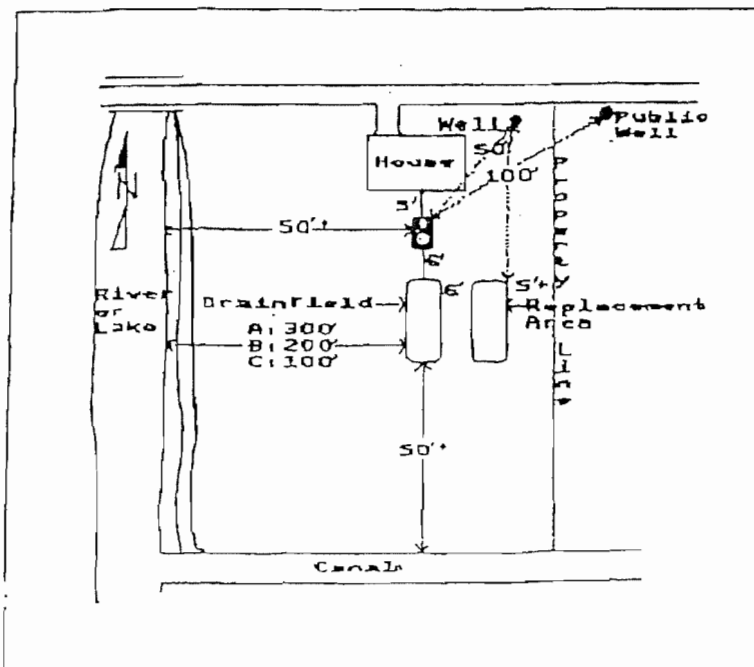
SAMPLE PROPERTY DIAGRAM AND SEPARATION DISTANCE REQUIREMENTS:

In addition to requirements shown below:

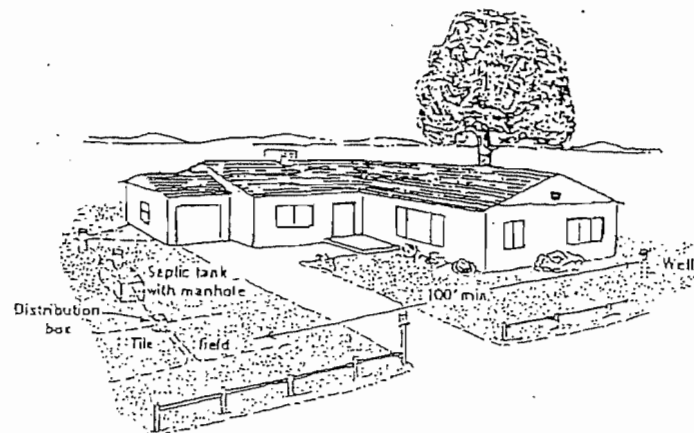
Wells should be 50'+ from surface water and 10' or more from property lines and basements.

Septic Tanks should be at least 100' from wells used for public drinking water, 50' from others; 25' from public water lines, 10' from others; 25' from canals; and 5' from property lines.

Drainfields should be at least 100' from all wells; 25' from pressure water lines; 100' from suction water lines; 10' from building crawl space or slab; 20' from basement; and 25'-75' from downslope cut, depending on soil type and strata



See separate requirements for large system of 2500 gallons or more per day.



378

S 1195

DISTRICT SEVEN HEALTH DEPARTMENT
DESCRIPTION OF COMMERCIAL USE THAT SYSTEM WILL SERVICE

1. periods of both
2. sampling locations
3. limits of acceptable levels
 a. BOD
 b. TSS
 c. grease and oils
4. reporting schedule to Health Department
- 370 pH
e. dissolved oxygen
f. other
- S11

Current Land Use:

gravel pit (excavated pit)

Dominate Vegetative Material Observed:

none

Slope:

☒ No☐ Yes

%

not in proposed pit

Flood Plain:

☒ No☐ Yes(don't know)

Test Hole Information

Type of Test Hole Observation:

Backhoe dug pit

Well Log

Boring

☒ Scarp

Horizon Information

Test Hole #1

Test Hole #2

Test Hole #3

220' x 220'

Comments:

Proposed depth of system:

22'

Depth of test hole(s):

220'

Predominant soil type at depth of proposed system:

Asymptotic 51198

Depth to nearest groundwater:

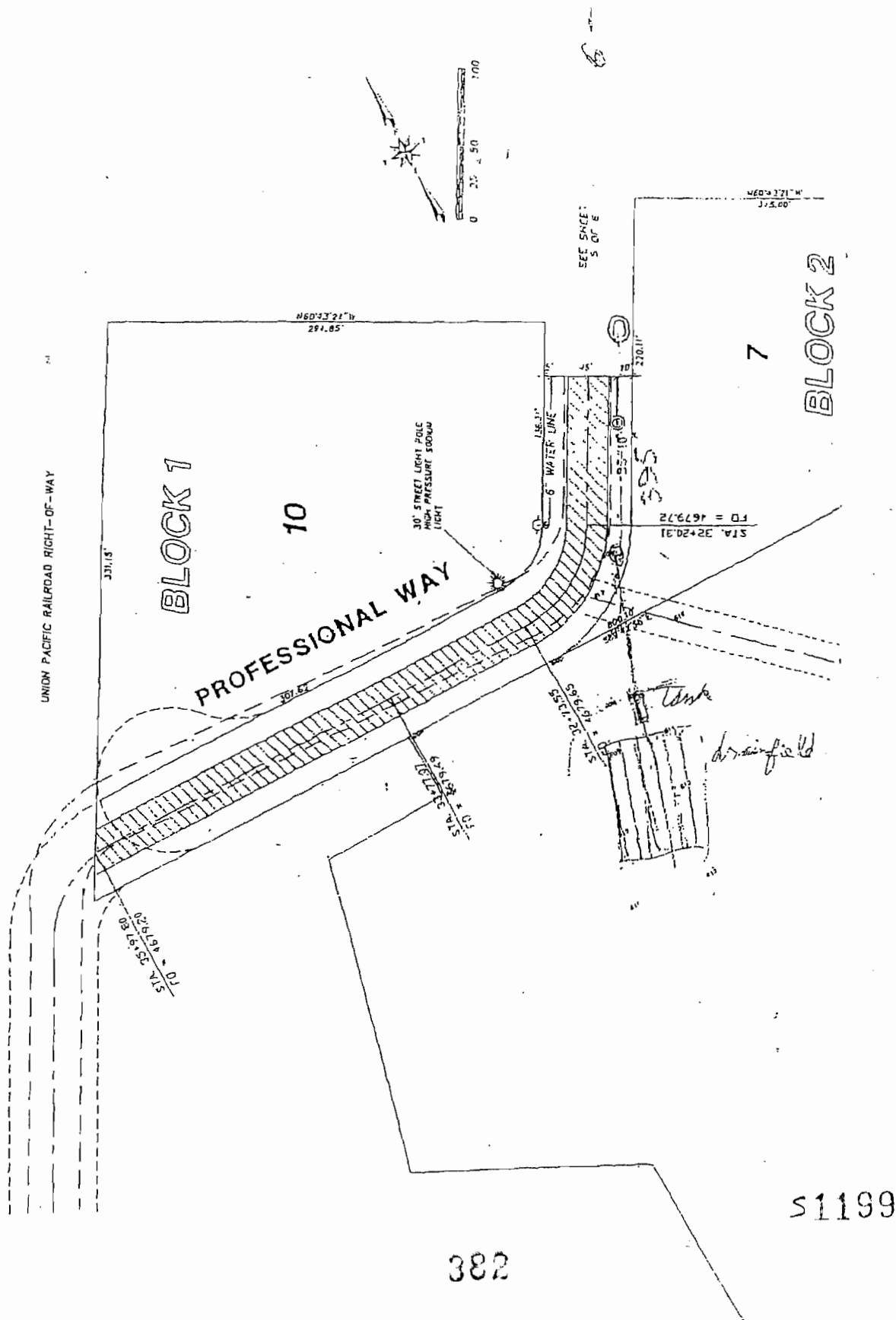
225/100'

Depth to nearest bedrock:

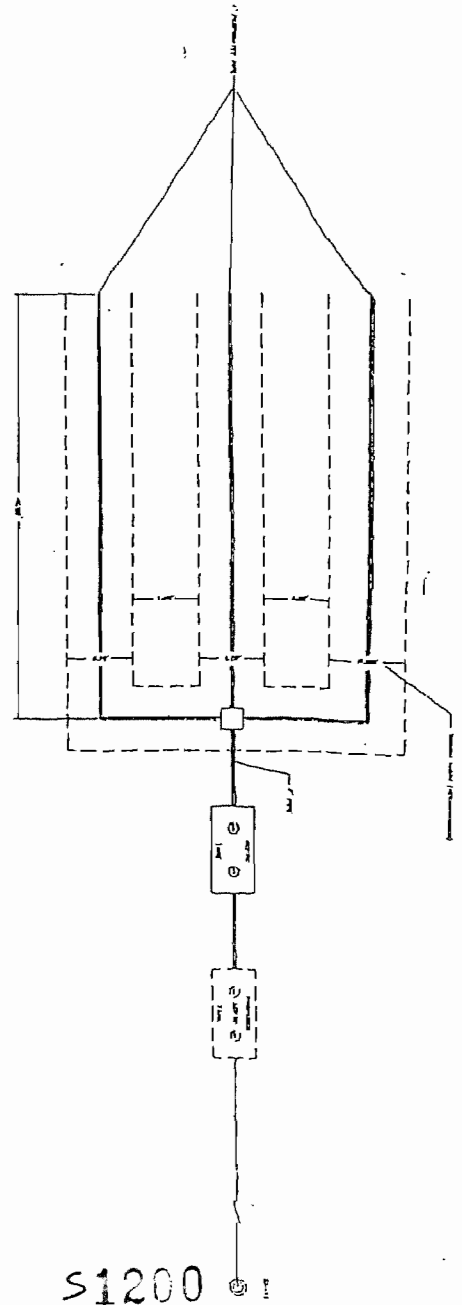
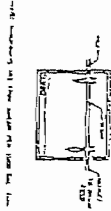
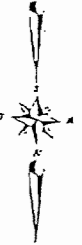
225-30'

FROM

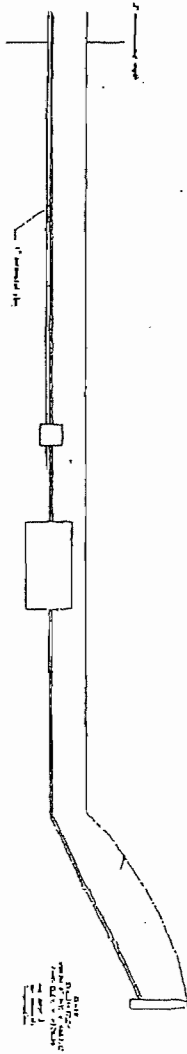
(MON) DEC 15 2008 16:07/ST. 16:04/No. 7530192465 P 16



FROM



Profile of drain field



BUNNYSIDE INDUSTRIAL PARK	
SEPTIC TANK	
DRAINAGE AREA	
DATE	12/15/08
TIME	1:00 PM
BY	1

FROM

(MON) DEC 15 2008 16:08/ST. 16:04/No. 7530192465 P 18

DISTRICT SEVEN HEALTH DEPARTMENT SEPTIC PERMIT

NOTE THIS PERMIT IS ONLY VALID FOR ONE YEAR FROM DATE OF ISSUE

Installation shall comply with all the requirements of the Health District and Idaho's National Sanitation Sewage Disposal Regulations as stated below. Failure to install system in compliance with permit will cause disapproval by District and possible legal action.

CDP No. 11287 T-Code: 237 Time: 45 min Permit No. 1095125
Receipt No. 11392

Permit Issued To: Name Sunnyside Industrial Professional Park Phone 208-5
For Location: Address Professional Way City Idaho Falls ID 23402
Subdivision Sunnyside Industrial Prof Park Lot 7-10 Block 2
Legal Description: 1/4 Section 36 Township 2N Range 3E

SEPTIC TANK SPECIFICATIONS (minimums)

Size of Septic Tank 750 gallons Multiple tank capacity 750 gallons or more
at least Pump Chamber gallons

For: 300 GalPerDay (1 or 2 bldgs)

Minimum Separation Distances Between Septic Tank and the Following Features of Concern:

• Public Well or Spring or Suction line	<u>100 Feet</u>	Permanent or Intermittent Surface Waters	<u>50 Feet</u>
• Private Well or Spring or Suction line	<u>50 Feet</u>	Temporary Surface Waters	<u>25 Feet</u>
• Public Water Distribution Lines	<u>25 Feet</u>	Downslope or Scarp	<u>25 Feet</u>
• Private Water Distribution Lines	<u>10 Feet</u>	Building Foundations	<u>5 Feet</u>
• Property Line	<u>5 Feet</u>	Seasonal High Water From Top of Tank	<u>2 Feet</u>

SPECIAL SEPTIC TANK CONDITIONS

SEWAGE DISPOSAL (DRAINFIELD) SPECIFICATIONS (minimums)

Approx. 300 gal per day (maximum)
Type(s) of Standard Sewage Disposal System Allowed: Trench x Bed x Pit x Graveless x
Basic Alternative Privy Steep Slope System Capping Fill Extra Drainrock Trench

Type(s) of Complex Alternative Disposal System Allowed: Sand Filter Intermittent Sand Filter Intrench
Sand Mound Lagoon Extended Treatment Systems Large Soil Absorption Systems
OTHERS NOTE: Water Table Must Be At Least 40 Feet Down for Seepage Pits

Complex Alternative Disposal Systems are required to be installed by a licensed complex installer

A: Gravelly/Sandy

0.75 GPD/SqFt

or less

DISPOSAL AREA SIZE 408 Sq. Ft. + MAXIMUM DEPTH OF EXCAVATION* 4 to 1 Foot

14 Sections, 240 SqFt, if dome trenches. If deeper than maximum depth system cannot be approved*

Minimum Separation Distances Between Drainfield and the Following Features of Concern:

• Permanent or Intermittent Surface Waters (depending on soil type)	<u>300 200 100 Feet</u>	6' above lava or water
• Well or Spring or Suction line	<u>100 Feet</u>	Temporary Surface Waters (canals-ditches)
• Distribution Lines (pressure)	<u>25 Feet</u>	Downslope or Scarp
• Distribution Lines (suction)	<u>100 Feet</u>	Building Foundations
• Property Line	<u>5 Feet</u>	From Septic Tank

SPECIAL CONDITIONS >>>--> NOTE: Give Pink Copy to Installer BEFORE work starts!!! <--<<
>>>--> CALL 208-523-5382 EARLY for INSPECTION to avoid delays!! (Plan = Sep 1996 Insta

* Call 523-5382 about changes if water, lava, or other soil type found in excavation.

I hereby agree that the system will be installed as per the permit and will not make any changes from the permit without written approval from District 7. I also hereby authorize access to this property for purpose of inspection.

Applicant's/Agents Signature X

51201

Date: Aug 13, 1996

11:22 AM 2008-12-15

EXHIBIT

DISTRICT SEVEN HEALTH DEPARTMENT SEPTIC SYSTEM INSPECTION REPORT

Activity Code 01Travel Time 20Inspection Time 2:45INSPECTION CONDUCTED FOR Name Sunnyside Industrial Professional Park Permit No. 100-319LOCATION OF INSPECTION: Street Address 5 Professional Way City Joachim Falls ID # 10Legal Description: 1/4 Section 1 Section 36 Township 36 Range 2 Lot 5 Block 7E
Subdivision Sunnyside Ind Prof Park (proposed) S of 7820

SEPTIC TANK INSPECTION

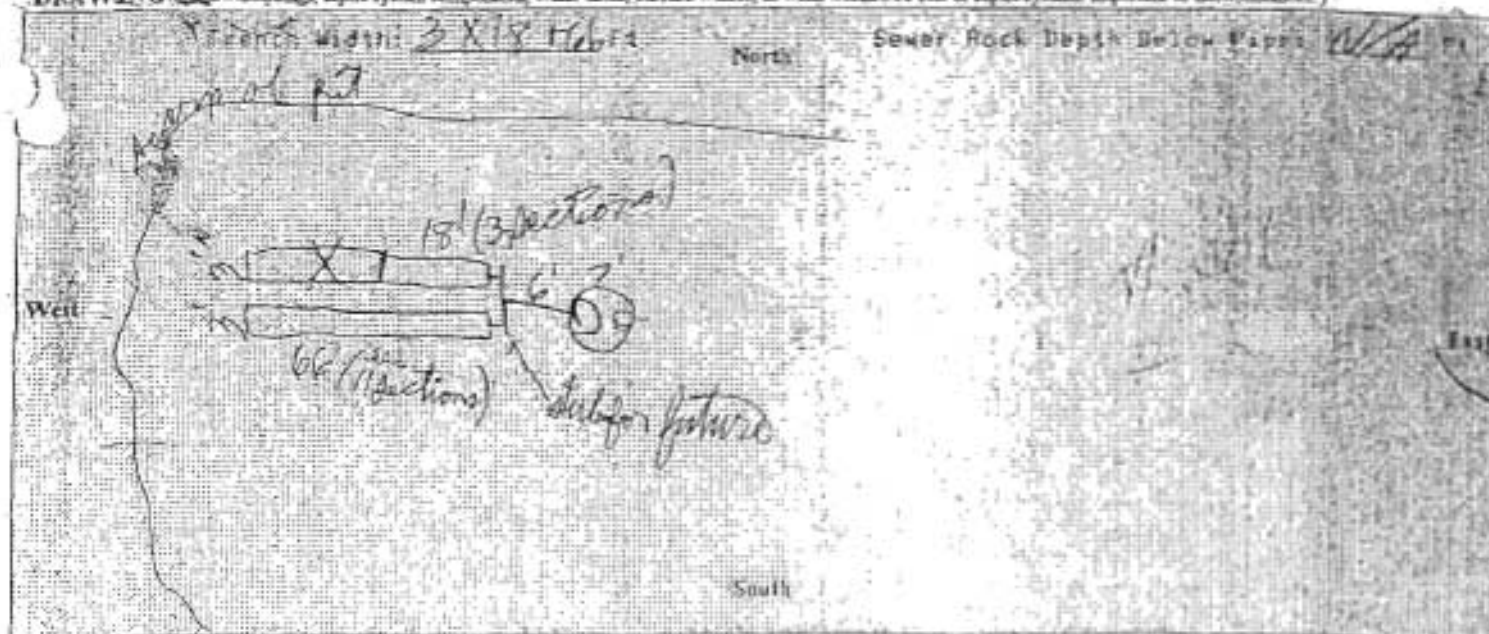
- Capacity of Septic(s) Tank Installed 1000 gallons. Septic Tank capacity = or greater than permit requirements? Yes No N/A
- Was Septic Tank construction in compliance with State regulations and was tank State approved? Yes No
- Were inlet and outlet properly sealed? Yes No
- Was extension of manhole required? Yes No Depth from final grade to manhole 2 feet
- Did Septic Tank meet minimum separation requirements as required by permit? Yes No

SUBSURFACE DISPOSAL (DRAINFIELD) INSPECTION

- Type of Disposal System installed? Infiltration Meets permit requirements? Yes No N/A
- Disposal Area Size? 240 Square Feet In compliance with Permit issued? Yes No
- Did Disposal System meet the minimum separation distance as required by the Permit? Yes No
- Was Disposal System constructed in compliance with the State Technical Guidance Manual? Yes No
- Maximum depth of Disposal System 4 Feet In compliance with Permit issued? Yes No

System installed primarily in Soil Type: A Gravelly

DRAWING: show building, septic system components, water lines, surface waters, & wells within 100 feet of septic system. (important to show distances.)



INSPECTION SUMMARY

Installed by:

This System appears to be: 17750 Clay Excavating 208-522-6248

Printed: 11:22 AM

08/23/96

- In Substantial Compliance with permit and is approved Yes
- Have Minor deficiencies which could cause premature failure, but still in substantial compliance with Intent of Rules. Yes
- Recommend that deficiencies be corrected, which could improve your system, but system is still approved Yes
- Have Major deficiencies which violate the Intent of Rules that must be corrected, system not approved (see below) Yes

>>> Avoid putting waste food down drain: have tank cleaned every 3 to 5 years <<<

RECTIONS REQUIRED:

385

51202

THE FOLLOWING TELECOPY IS FROM:

**LAW OFFICES OF
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. BOX 50935
IDAHO FALLS, IDAHO 83405
TELEPHONE (208) 524-5400
FACSIMILE (208) 524-7167**

THIS TELECOPY IS BEING SENT TO:

Name: Michael Gaffney

Facsimile Number: 529-9732

Date: 12/15/08 Time Sent: 4:10 p.m.

Number of pages, including transmittal sheet: 19

****IF YOU DO NOT RECEIVE ALL PAGES OR YOU HAVE
PROBLEMS RECEIVING THIS MESSAGE, PLEASE CALL
FULLER & CARR LAW OFFICE****

Regarding: Printcraft v. Sunnyside Park Utilities

Our File No.: _____

Defendants' Third Supplemental Expert Witness Disclosure

CONFIDENTIALITY NOTE:

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an Idaho)
corporation,)

Plaintiff,)

vs.) Case No. CV-06-7097

SUNNYSIDE PARK UTILITIES, INC.,)
an Idaho corporation,)

Defendant.)

_____)

30(B)(6) DEPOSITION OF SUNNYSIDE PARK UTILITIES, INC.

TESTIMONY OF DOYLE H. BECK

May 30, 2007

REPORTED BY:

DANIEL E. WILLIAMS, CSR No. 686, RPR

Notary Public.



51204

1 ability to testify today?
 2 A. Not that I know of.
 3 Q. You don't feel groggy or sleepy or
 4 lethargic in any way?
 5 A. No.
 6 Q. Okay. Are you suffering from any
 7 sicknesses or impairments, other than hay fever?
 8 A. Old age.
 9 Q. Do you believe that that might affect
 10 your testimony today?
 11 A. Oh, it certainly ain't what she used to
 12 be.
 13 Q. Well, let me be more specific. Do you
 14 believe that's going to affect your memory about
 15 the things that have transpired in this case and
 16 your ability to testify about those things?
 17 A. Probably not, as I -- if I can utilize
 18 things to help me recall, like letters and...
 19 Q. Okay. If you --
 20 A. I can't remember everything, no.
 21 Q. Sure. And I understand that.
 22 A. With some refreshment, I can probably
 23 remember.
 24 Q. Okay. So if you were able to see
 25 documentation, you'd be able to testify about

1 that documentation?
 2 A. Yes.
 3 Q. Okay. To the best of your knowledge,
 4 is there anything else that might affect you or
 5 your ability to testify in this case?
 6 A. No.
 7 Q. Okay. Let me have you go ahead and
 8 take a look at Deposition Exhibit No. 28, then.
 9 Again, this is the amended notice from Printcraft
 10 of taking the deposition of Defendant Sunnyside
 11 Park Utilities, under Rule 30(B)(6).
 12 In this notice, we've designated 12
 13 specific areas that we intend to exam you on and
 14 have you testify about. And you've taken a
 15 moment and you've read through those.
 16 Are there any of these items, 1 through
 17 12, that you believe you would not be able to
 18 testify about?
 19 A. Just subject to, you know, source
 20 documents or, I mean, like, you know, the
 21 formation of the entity, I probably couldn't tell
 22 you the date unless I looked at something, but I
 23 could tell you that it was formed and who formed
 24 it.
 25 Q. Okay. You have general knowledge about

1 these areas, then?
 2 A. Yes.
 3 Q. And again, if I were to present you
 4 with documentation to refresh your memory, that
 5 would help you with dates and chronology and that
 6 sort of thing?
 7 A. Yes.
 8 Q. Okay. But just to make sure, there's
 9 none of these items, 1 through 12, that are you
 10 unable to testify about; is that accurate?
 11 A. Well, I guess you need to explain the
 12 question, because -- I mean, one of them -- just
 13 to give you an example, one of them says "Any and
 14 all statutes, rules, regulations, ordinances,
 15 codes, or otherwise codified body of law that is
 16 applicable to the sewer system." I can't quote
 17 those for you.
 18 Q. Sure.
 19 A. But I can probably help you find them
 20 if you need me to.
 21 Q. Okay. And that's generally what I'm
 22 seeking is some general knowledge.
 23 A. Okay.
 24 Q. And then if I am going to ask you
 25 specific things, then I will show you documents

1 and --
 2 A. Okay.
 3 Q. -- give you a chance to review those as
 4 well.
 5 All right. Turn to page 4 in this
 6 amended notice, if you wouldn't mind.
 7 A. Okay.
 8 Q. Printcraft made a request of three
 9 specific types of documents. Did you bring any
 10 documents with you today that would be responsive
 11 to those requests?
 12 A. I only brought photographs.
 13 Q. Okay. So you do have some photographs
 14 in response to item B on page 4?
 15 A. Well, I think that, because I didn't
 16 really know, I had provided some photographs to
 17 Mark, my attorney. And I may have taken three
 18 photographs of a specific item but only provided
 19 him the one that I thought was the best, the most
 20 clear, you know, showed what I was trying to
 21 show.
 22 Q. Sure.
 23 A. The other two I may not have provided.
 24 And he said I needed to provide all of them, so I
 25 just put them on a CD and brought them. 2205

1 Q. Oh, you've got them available to you on
2 a CD?

3 A. Yes.

4 Q. Okay. Would you mind if I took that?

5 A. (Witness complied.)

6 Q. Thank you.

7 And it's your testimony, then, that
8 this CD that you've just handed to me is
9 responsive to item B on this notice, which is on
10 page 4, "All photographs taken by agents,
11 officers, directors, or representatives of
12 Sunnyside Park Utilities of both the interior or
13 exterior of the premises now occupied by
14 Printcraft Press from January 2006 to the
15 present"?

16 A. It's all the ones that I have taken or
17 have viewed. Now, whether or not, you know,
18 someone else took some that I may not know about,
19 it could be possible.

20 Q. In response to this document request,
21 did you make any inquiries with any other agents,
22 officers, directors, or representatives of
23 Sunnyside Park Utilities?

24 A. Well, the only other -- the only other
25 one of those is Kirk Woolf, and I asked him; he

1 didn't have any. But, like, I don't know for
2 sure. Like Craig Beck, the meter reader, he may
3 have photographs that I don't have access -- I
4 have access to them, but I've never gotten them
5 from him. I could inquire of him if he has any
6 more, but I don't know what he has.

7 I think he's taken pictures of the hole
8 and given them to Mark Fuller, but I don't know
9 if he gave them all of them or some of them. I
10 don't know what he'd done there.

11 Q. Do you know if, in response to the
12 discovery requests that we sent out, that all of
13 those pictures that were given to Mr. Fuller were
14 provided to us?

15 A. As far as I know, they were. But you'd
16 probably have to ask Mr. Fuller.

17 Q. But you have not inquired of any other
18 agent, representative, officer, or director of
19 Sunnyside Park Utilities, other than Mr. Woolf --

20 A. Well, he's only the only other officer
21 and director.

22 Q. Okay.

23 A. And Craig is more like an employee.
24 He's not a representative.

25 Q. He's not a representative, but he is an

1 agent and has acted in the agency capacity to do
2 work on behalf of Sunnyside Park?

3 A. He's the meter reader and the bill
4 collector.

5 Q. The bill collector?

6 A. He sends out invoices and he reads
7 meters.

8 Q. And it's your testimony that he also
9 did take some photographs that you know of, but
10 you haven't provided those?

11 A. Well, I think that he provided them to
12 Mark Fuller, and I don't know if he provided all
13 off them to Mark Fuller and I don't know if
14 Mark Fuller provided the ones to you that was
15 provided to him.

16 Q. Okay. All right. Again directing your
17 attention to Deposition Exhibit 28, page 4, the
18 document requests that we've been talking about,
19 have you, to date, received, in response to
20 item C, any written opinions, reports, diagrams,
21 or the like from any person you've designated as
22 an expert witness, other than what has been
23 disclosed in the discovery responses that we've
24 received?

25 A. Not that I'm aware of.

1 Q. Do you anticipate receiving any of
2 those types of items from these experts that
3 you've designated?

4 A. You'd have to ask my attorney that.
5 I...

6 Q. You haven't been in contact with these
7 individuals yourself?

8 A. No.

9 Q. At this date -- well, strike that.

10 All right. Mr. Beck, let me just give
11 you some preliminary background as to how I'm
12 anticipating going about this deposition just so
13 you'll know.

14 When I originally prepared this notice,
15 I anticipated simply going through item 1 and
16 exhausting it, then going through item 2 and
17 exhausting it, and so forth. And what I
18 discovered, as I began doing that, is that
19 obviously there's quite a bit of overlap, and in
20 many instances, I exhausted other areas as I was
21 exploring 1 or 2, or one of the others.

22 And so I apologize to you, but I will
23 not be going in order as these are listed. I
24 tried to find the way that I thought would be the
25 most efficient, help us cover the most ground.

1 But I will be asking you questions
2 about each of these areas, and I'm certain that
3 Mr. Fuller will hold me to that, as I did him
4 when he was taking Mr. Travis Waters' deposition.

5 So the only other thing that I would
6 request is that as I'm asking you these
7 questions, if you don't understand it or if you
8 would like me to rephrase it, simply say so. I
9 would rather that you provide me an answer that
10 you believe is honest and accurate rather than a
11 guess or some opinion that you're not certain of.

12 Does that make sense?

13 A. Yes.

14 Q. Okay. I'm going to hand you now what
15 has been marked as Deposition Exhibit No. 29.

16 MR. FULLER: Thank you.

17 Q. (BY MR. ERICKSON) I'm also going to
18 hand you what's been marked as Deposition Exhibit
19 No. 30. And I'll just ask you questions that
20 interrelate with these two items.

21 Go ahead and take a moment and look
22 through these documents and let me know when
23 you're ready to talk about them.

24 A. Okay.

25 Q. All right. I want to first ask you

1 some questions about the organization of
2 Sunnyside Park Utilities, Incorporated.

3 And just at the beginning here, if we
4 may, can we agree that if I say Sunnyside, that
5 name, that what we're referring to is Sunnyside
6 Park Utilities, Incorporated, who is the
7 defendant in this case?

8 A. Hopefully.

9 Q. Okay. If I am going to talk about any
10 of the other entities that are involved in the
11 park, I'll try to designate them by specific
12 name. But again, if I say Sunnyside, what I'm
13 referring to is the defendant in this case; is
14 that fair?

15 A. Yes. But what's not fair would
16 probably -- because I'm involved in Sunnyside
17 Park Utilities and Sunnyside Industrial. When
18 you ask me a question, I may not think of which
19 entity I'm responding to, and it may need to be
20 clarified.

21 Q. Okay. If there is some confusion on
22 your end about that, would you mind asking me for
23 clarification?

24 A. Well, I'll try. I'm just -- but, you
25 know, as I come up with an answer, I may not be

1 thinking, oh, that's the industrial park.

2 Q. Okay.

3 A. But hopefully, I'll try.

4 Q. Okay. I appreciate that.

5 And just so you'll know, the focus of
6 this deposition and scope of it is in your
7 capacity as a representative of Sunnyside Park
8 Utilities, Incorporated. And so that's where I'm
9 trying to focus my questions.

10 All right. In talking about the
11 creation or organization of Sunnyside, can you
12 tell me who it was organized by?

13 A. What do you mean by that?

14 Q. Who created it?

15 A. Mark Fuller.

16 Q. Okay. Mark Fuller was the attorney who
17 assisted in its creation?

18 A. Yes.

19 Q. Who would have been the individuals who
20 would have been involved in that organization
21 from the standpoint of owners, shareholders, that
22 sort of thing?

23 A. Kirk Woolf was the incorporator.

24 Q. Okay.

25 A. And the shareholders are myself and

1 Kirk Woolf.

2 Q. Looking at these documents I've
3 provided to you, can you tell me approximately
4 when Sunnyside was created or organized?

5 A. Kirk Woolf signed it on March 28th,
6 2002.

7 Q. All right. So if we say March 2002, is
8 that fine with you?

9 A. Yes.

10 Q. In March of 2002, then, you indicated
11 that there were two shareholders, which were your
12 yourself, Doyle Beck, and Kirk Woolf; is that
13 accurate?

14 A. I believe so. But I'm not even sure
15 that -- the stockholder might be Sunnyside
16 Industrial and Professional Park. I'm not
17 positive.

18 Q. Okay. I'm assuming that Sunnyside --
19 Sunnyside Professional and Industrial Park is
20 what you said?

21 A. Yeah.

22 Q. I'm assuming that that's a corporation
23 of some sort?

24 A. Yes.

25 Q. Do you know what type of corporation

1 saying buildings, but I should say occupants.
 2 A. That accurately describes the use,
 3 prior to and since.
 4 Q. Okay. Were there any connections made
 5 to the system after Printcraft?
 6 A. Yes.
 7 Q. How many were made?
 8 A. There was one connection. I know
 9 there's -- no, there was two connections. Well,
 10 I don't know. I know for sure there was one, and
 11 maybe two.
 12 Q. Okay.
 13 A. There was also a change in one of the
 14 connections.
 15 Q. What do you mean by that?
 16 A. Well, ProWay Manufacturing ceased
 17 operations in the shop building, and Mountain
 18 Truss started their operations up afterwards.
 19 Q. In the same building?
 20 A. Yes. So it went from like -- I mean,
 21 I'd have to give you the number -- the
 22 employees -- the use changed.
 23 Q. Okay.
 24 A. From like four employees to like 14.
 25 Q. And just so I understand, it was within

1 MR. ERICKSON: He describes --
 2 MR. FULLER: -- or discharged?
 3 MR. ERICKSON: Excuse me. Yeah,
 4 discharged.
 5 Q. (BY MR. ERICKSON) We're talking about
 6 a tank that I understand has a capacity of
 7 500 gallons per day; is that accurate?
 8 A. Yes.
 9 Q. And so my question is: Can you tell
 10 me, on a daily basis, before Printcraft hooked
 11 up, just approximately how many gallons per day
 12 were being used?
 13 A. Yes, somewhere between 200 and 300.
 14 Q. Okay. With the occupants that already
 15 existed?
 16 A. Yes. And Printcraft Press should have
 17 added about a hundred.
 18 Q. Based on your calculations?
 19 A. Based on the use that we're currently
 20 using at right now. We were using about
 21 3 gallons per individual per day on average.
 22 Q. And I'll be getting to that a little
 23 later.
 24 Let's talk a little bit more about this
 25 temporary failure that's described in your

1 the same building, the same premises?
 2 A. Right.
 3 Q. One left and another one came in?
 4 A. Right. A different lessee under the
 5 same preference -- different type of
 6 manufacturing process.
 7 Q. Okay. Before Printcraft began actually
 8 discharging into the system, do you have any idea
 9 what the capacity was that was left?
 10 In other words, I guess my question
 11 really is: Do you know how much of your system
 12 was actually being used on a daily basis out of
 13 those 500 gallons a day?
 14 A. Yes. I've back-calculated that and
 15 provided that to you.
 16 Q. Okay. That's in the documentation that
 17 you provided?
 18 A. Yes.
 19 Q. Okay. Just out of curiosity -- and I
 20 realize the documents going to be the accurate
 21 one -- do you just recall approximately how many
 22 gallons per day you were using before Printcraft
 23 began discharging?
 24 MR. FULLER: Object to the form of the
 25 question. Gallons used --

1 counterclaim, Sunnyside's counterclaim. When did
 2 you first realize that there was a problem with
 3 the system?
 4 A. I can't remember what it was for, but I
 5 went down there and found ink all over the
 6 ground, coming out of the ground.
 7 Q. Did somebody contact with you and ask
 8 you to come and look at it?
 9 A. No.
 10 Q. It was something you discovered on your
 11 own?
 12 A. Yes.
 13 Q. After you made that discovery, then
 14 what happened?
 15 A. Well, that's when we talked to District
 16 Seven, and then and we went and visited Travis --
 17 or I did.
 18 Q. Immediately after you discovered this?
 19 A. Well, pretty close, yeah.
 20 Q. When you say "pretty close," give me an
 21 idea of what you mean.
 22 A. Within a week.
 23 Q. Okay.
 24 A. Within a day or two.
 25 Q. Okay. What was said?

S 1208

1 of February. So that's the day we were in a
2 position to start recording.

3 Q. Okay. Let me make sure I understand
4 this. You said that February 6th was the day
5 that began because you were able to do the final
6 calibration?

7 A. Yes.

8 Q. What type of calibration was done on
9 this instrument?

10 A. Well, it took me a while to program it
11 and calibrate it and make sure that I had the
12 right parameters in it and communications with
13 the factory. And so, I mean, I had -- I let it
14 read for a while, and then I'd check it and let
15 it read, until I felt comfortable with what it
16 was doing.

17 Q. Okay. Tell me how this device works.

18 A. It measures the depth of water.

19 Q. Where does it measure it at? I mean,
20 where do you put the device in order to do that
21 measurement?

22 A. I have it installed in the third septic
23 tank.

24 Q. That's on the -- it's connected to the
25 system that we're talking about here today?

1 A. Well, you have to tell it the diameter
2 of the pipe and the slope of the pipe, and it
3 knows the temperature. And it calculates the
4 velocity and the depth based -- and then the
5 flow, based on the depth in the pipe itself.

6 So it knows -- if it's a 4-inch pipe
7 and it's on a 1 percent slope, it knows that a
8 quarter-inch of water is so many gallons per
9 minute.

10 Q. Okay. That's what it's designed to
11 measure, then, is --

12 A. Yes.

13 Q. -- the actual volume?

14 A. Actual water depth. You can tell it
15 different sizes. I mean, you can tell it 6-inch
16 pipe or 2-inch pipe. And whatever you tell it,
17 then it does the calculation. But what it's
18 measuring is the depth of the water in that pipe.

19 Q. And that's part of the calibration
20 process is to put in the type of pipe and the
21 type of --

22 A. Right.

23 Q. -- grade, you said?

24 A. Uh-huh.

25 Q. Are there any other type of information

1 A. Yes. So it's the -- it measures the
2 flow going into the drainfield.

3 Q. From the third septic tank?

4 A. Yes.

5 Q. How was it installed in the septic
6 tank?

7 A. Inside of a pipe, you know, that's in
8 the tank.

9 Q. That goes into it or comes out of it or
10 is it internally?

11 A. It's measuring the exterior flow, flow
12 going out of it.

13 Q. How was it installed?

14 A. It's attached to the pipe.

15 Q. Are there arms -- wire arms or
16 something coming down holding it in the center of
17 the pipe, or does it just kind of float into
18 pipe, or how exactly does that work?

19 A. It's actually screwed to the side wall
20 of one of the pipes, next to the -- yeah.

21 Q. And your explanation was that it
22 measures the level of water?

23 A. Right.

24 Q. And it must measure the volume of
25 water?

1 that's put into that?

2 A. No, it does everything else. It's got
3 its own. It measures the temperature of the
4 water. And I don't know how that calculates, but
5 it knows the temperature and the depth and the
6 velocity and the flow.

7 Q. And the information that's provided in
8 Exhibit No. 63 is derived from this device after
9 all this process that you just described --

10 A. Yes.

11 Q. -- the installation, calibration, and
12 whatnot?

13 A. Yeah.

14 Q. Are there any tests that you do to see
15 and verify its accuracy?

16 A. Yes.

17 Q. What are those?

18 A. What I done, after I had it all
19 calibrated, is I took two 5-gallon buckets and
20 dumped it in the last manhole, and then
21 measured -- and I done it on a Saturday when
22 there was no flow -- and I measured the flow that
23 it said was going through.

24 Q. So it was just kind of a manual test
25 that you did by dumping water down the manhole?

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an Idaho)
corporation,)
Plaintiff,) Case No.
vs.) CV-06-7097
)
SUNNYSIDE PARK UTILITIES, INC., an)
Idaho corporation; SUNNYSIDE PARK)
OWNERS ASSOCIATION, INC., an Idaho)
corporation; SUNNYSIDE INDUSTRIAL)
AND PROFESSIONAL PARK, LLC, an Idaho)
limited liability company; DOYLE)
BECK, an individual; and KIRK WOOLF,)
an individual,)
Defendants.)
SUNNYSIDE PARK UTILITIES, INC., an)
Idaho corporation,)
Counterclaimant,)
vs.)
PRINCRAFT PRESS, INC., an Idaho)
corporation and TRAVIS WATERS, an)
individual,)
Counterdefendants.)

DEPOSITION OF LANCE SCHUSTER

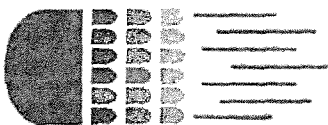
Friday, January 16, 2009, 1:00 p.m.

Idaho Falls, Idaho

EXHIBIT

tabbles

F



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

COPY

REPORTED BY:

Sandra D. Terrill,
RPR, CSR

PREPARED FOR:

MR. GAFFNEY

51210

POST OFFICE BOX 51020
IDAHO FALLS, IDAHO 83405

208.529.5491 • FAX 208.529.5496 • 1.800.529.5491

DEPOSITION OF LANCE SCHUSTER - 01/16/09

SHEET 7 PAGE 25

1 A. I wasn't doing anything.
2 Q. Did you take any photographs?
3 A. No.
4 Q. Had you taken a camera that day?
5 A. No.
6 Q. At any time did Mr. Starr take any
7 photographs of the Sunnyside drain field, the
8 septic field?
9 A. No.
10 Q. Do you now know who owns the vacant
11 lot?
12 A. Well, I still believe that it's Ideal
13 Construction, or I think another entity that I saw
14 on a plat map was Ideal Heavy Haul, which I assume
15 is related to Ideal Construction.
16 (Exhibit *-008 marked.)
17 Q. BY MR. FULLER: I'm handing you what's
18 been marked as Exhibit *-008. This is the
19 affidavit of Russell Christensen. Have you seen
20 this affidavit before?
21 A. Yes.
22 Q. I'd direct your attention to
23 paragraph 4. Mr. Christensen has testified on
24 April 2, 2008, affiant personally observed two
25 individuals cross a fence and enter onto property

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1 it on the same path that you took between your car
2 and the location where you were observing the
3 gravel field, the gravel pit. And he was in the
4 midst of that vacant lot approaching you?
5 A. Yes.
6 Q. What did Mr. Christensen say?
7 A. Well, Mr. Christensen asked what we
8 were doing, and I told him that we were looking at
9 the soils. And he said, no, what are you really
10 doing. And I said, we're looking at the soils,
11 which is what we were really doing.
12 And he asked who we were, and I said,
13 my name's Lance Schuster and this is Bob Starr.
14 He's a hydrologist. And I asked him if he was the
15 owner of the property. He said, no, the property
16 is owned by Ideal Construction.
17 I think he again asked me why we were
18 there, and I could tell he was nervous, if that's
19 the right word. He was on the phone the entire
20 time he was speaking to us, presumably to your
21 client or --
22 Q. Do you know who he was speaking to?
23 A. No. And when he appeared nervous, I
24 asked him, I said, would you like us to leave, and
25 he said, yes. And so Bob and I left. I presumed I

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1 owned by Sunnyside Park Utilities, LLC, and then
2 enter onto property owned by Ideal Heavy Haul,
3 Incorporated.
4 Do you dispute that Mr. Christensen
5 saw you and Mr. Starr enter onto property owned by
6 Sunnyside Park Utilities?
7 A. Yes.
8 Q. Do you agree that Mr. Christensen saw
9 you that day?
10 A. Yes.
11 Q. Can you indicate for me on the picture
12 where Mr. Christensen was when you first became
13 aware of his presence?
14 A. Well, Bob and I were standing in the
15 location marked by an X when I first observed an
16 individual, Russ, walking towards us. And he was
17 maybe a hundred feet away when I first observed
18 him.
19 Q. Can you identify for me on Exhibit
20 *-003 where Mr. Christensen was when you first saw
21 him?
22 A. I'll write a --
23 Q. Perhaps with a small circle.
24 A. How about a capital C?
25 Q. That will be great. So you've drawn

PAGE 28

1 would then be able to figure out who the owner of
2 Ideal Construction is and come back at a later
3 date. So that was about the extent of our
4 conversation.
5 Q. Mr. Christensen states that he saw the
6 individuals taking pictures of the pit owned by
7 Sunnyside Park Utilities. Is your testimony that
8 no such pictures were taken?
9 A. Yes. My testimony is that Russ
10 Christensen perjured himself and you suborned
11 perjury. That's my testimony.
12 (Exhibit *-009 marked.)
13 Q. BY MR. FULLER: I'm handing you what's
14 been marked as Exhibit *-009. Can you identify
15 this for me?
16 A. Exhibit No. *-009?
17 Q. Yes.
18 A. This is a letter that I wrote to
19 Mackay Hanks.
20 Q. Were you the author and signatory of
21 this letter?
22 A. Yes. *S1211*
23 Q. For what purpose did you draft this
24 letter?
25 A. Well, Counselor, at the time I recall

**Transcript of the Testimony of:
Michael Lund**

Date: August 1, 2007
Volume: I

Case: SUNNYSIDE PARK UTILITIES, INC., v.
ENVIRONMENTAL QUALITY

Printed On: May 30, 2008



T&T Reporting
Phone: 208/529-5491
Fax: 208/529-5496
Email: tntreport@ida.net
Internet: www.tandtreport.com

S 1212

1 reduces BOD, TSS contaminants by about 15 percent is
2 all. Most of the treatment is done by the soil in
3 the absorption field.

4 Q Okay. Would you please describe your
5 knowledge of the businesses that have in the past or
6 are currently discharging to the system?

7 A I have no knowledge of that, other than
8 I know that most of them are office buildings with
9 drinking fountains and restrooms. We did have a
10 problem at one time with Printcraft discharging who
11 knows what in there, and that caused the system to
12 overload.

13 It was actually water on the surface
14 when they were discharging tremendous amounts into
15 it.

16 Q Okay. And when did that occur?

17 A I don't remember the exact date. I
18 visited the site several times while it was
19 occurring, but I don't remember the exact date.

20 I could find it in my planner if you
21 need that, but I don't remember it.

22 Q Okay. In your opinion, why did the
23 system fail at that time? My use of the term "fail"
24 means that there was wastewater ponding on the
25 ground surface.

1 MR. FULLER: Continuing objection as to
2 relevancy, unrelated to reasonable accessibility.

3 You can answer as best you know.

4 THE WITNESS: I don't believe the
5 system failed. I believe it was overloaded by
6 the discharge coming from Printcraft.

7 It was not wastewater -- human
8 wastewater, as we would think, that needed to be
9 treated. It was strictly ink and water coming
10 from Printcraft.

11 I went down three days in a row and
12 there were three different colored water on
13 there. One time it was green. One time it was
14 red. One time it was blue.

15 So my opinion is that the system did
16 not fail as you would term a normal septic system
17 failing. The failure of a normal septic system
18 is due to the porous -- porosity being filled up
19 with solids and it will no longer take the liquid
20 and treat it and allow it to dissipate.

21 This was strictly an overloading of the
22 system that -- it just did not have the capacity
23 to handle it, so it came to the surface.

24 Q Okay. Would you please describe your
25 knowledge of the existing collection and

>1214

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ATTORNEY FOR DEFENDANT - SUNNYSIDE PARK UTILITIES, INC.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an
Idaho corporation,

Plaintiff,

v.

SUNNYSIDE PARK UTILITIES,
INC., an Idaho corporation,
SUNNYSIDE PARK OWNERS
ASSOCIATION, INC., an Idaho
corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC., an Idaho limited
liability company, DOYLE BECK,
an Individual and KIRK WOOLF,
an Individual,

Defendants.

SUNNYSIDE PARK UTILITIES,
INC., an Idaho corporation and
SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC., an
Idaho limited liability
company,

Counterclaimants,

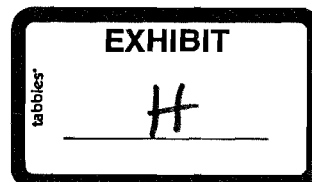
v.

PRINCRAFT PRESS, INC., an
Idaho corporation and TRAVIS
WATERS, an Individual.

Counter-defendants.

Case No. CV-06-7097

DEFENDANT'S SUNNYSIDE PARK
UTILITIES, INC.'S RESPONSE TO
PLAINTIFF'S FOURTH SET OF
REQUESTS FOR PRODUCTION



and through its counsel of record, Mark R. Fuller, and submits the following Answers to Plaintiff's Fourth Requests for Production.

GENERAL OBJECTIONS

As to each of the Requests and Responses thereto which are set forth below, the following general objections are made with regard to said responses and are hereby incorporated by reference.

1. Defendant objects to the discovery requests to the extent they seek information subject to the attorney-client privilege, constitute attorney work product, which are proprietary or confidential, or are otherwise protected from disclosure.

2. The Defendant has not completed its discovery, trial preparation, or investigation of the facts underlying this action and therefore, gives these responses without prejudice to its right to supplement each response as necessary.

REQUEST FOR PRODUCTION NO. 50: Pursuant to IRCP 26(b)(4) please produce a complete statement of all opinions to be expressed by your expert(s) and the basis and reasons therefore; the data or other information considered by the expert in forming his or her opinions; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary or support for the expert's opinions; any qualifications of the expert witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony, and a listing of other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 50: Defendant objects on the basis that IRCP 26(b)(4) does not allow discovery of these facts by request for production. IRCP 26(b)(4) expressly provides that discovery of facts known and held by experts expected to testify "may be obtained by Interrogatory and/or deposition." Discovery by other means, including Requests for Production, requires an Order of the Court pursuant to IRCP 26(b)(4)(ii). Defendant further objects to the extent that such requested documentation have been submitted in response to prior Interrogatories and Requests for Production, including but not limited to Plaintiff's Request for Production No. 1 and all supplemental responses.

Notwithstanding such objections, attached please find the Deposition of Michael Lund taken August 1, 2007, in the administrative proceeding before the Board of Environmental Quality, State of Idaho in the Case of *Sunnyside Park Utilities, Inc. v. Idaho Department of Environmental Quality* and the Deposition of Kirby S. Olsen taken April 30, 2008, in the present action. As to other expert witnesses, identified by Defendant, Defendant will respond to timely submitted Interrogatories and/or deposition questions pursuant to IRCP 26(b)(4).

DATED THIS 2nd day of June, 2008.

FULLER & CARR



Mark R. Fuller
Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of the following described pleading or document on the attorney listed below a true and correct copy thereof on this 2 day of June, 2008:

Document Served: DEFENDANT'S RESPONSE TO PLAINTIFF'S
FOURTH SET OF REQUESTS FOR
PRODUCTION

Attorney Served:

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2105 Coronado
Idaho Falls, ID 83404

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2009 FEB 11 7:16:38
HAP
CO. CLERK
BONNEVILLE COUNTY

Attorneys for the Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC., an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE RE: SUMMARY
DOCUMENTS AND DRAWING OF
DEVELOPER'S SIGN

The plaintiff, Printcraft Press, Inc. (Printcraft) submits the following
memorandum in opposition to defendant's motion in limine.

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INTRODUCTION

The rules do not support Sunnyside's premature motion in limine. Exhibit lists are not due in this case until February 17, 2009. Sunnyside has moved to exclude exhibits before they are even listed as exhibits. Instead of seeking to try the case on the merits, Sunnyside attempts to exclude evidence based on hyper-technicalities. Excluding the summary documents will only serve to lengthen trial time and cause unnecessary delay. All of the backing documents have been produced and witnesses have been thoroughly deposited and re-deposited.

Further, any evidence of the sign is probative on the efforts Printcraft took in researching the subdivision before purchasing a lot. Sunnyside claims Printcraft could have discovered the existence of the septic inadequacies and limitations. The sign indicates "sewer" not "septic" and justifies Printcraft's conduct before coming into the subdivision. Such evidence is admissible and should not be excluded.

This Court's recent decision on summary judgment makes it absolutely clear that the issue of damages in this case is a jury question. The present motion in limine is nothing more than another attempt by Sunnyside to prevent the issue of damages from going to a jury. Sunnyside's motion should be denied.

LEGAL STANDARD

A motion in limine seeks an advance ruling on the admissibility of evidence. *State v. Young*, 136 Idaho 113, 120, 29 P.3d 949, 956 (2001). The motion in limine is based upon an alleged set of facts rather than the actual testimony in order to for the trial court to make its ruling and therefore is not a final order. *Id.* The trial court may reconsider the issue at any time, including when the actual presentation of facts is made. *Warren v.*

Sharp, 139 Idaho 599, 605, 83 P.3d 773, 779 (2003). The decision to grant a motion in limine is a discretionary decision for the Court. *Id.*; see also *Viehweg v. Thompson*, 103 Idaho 265, 647 P.2d 311 (Ct. App. 1982). The *Idaho Trial Handbook* explains when a motion in limine is helpful:

The motion in limine is potentially useful in two situations: [1] where a party anticipates that an opponent will offer evidence of questionable admissibility, and the mere mention of the evidence during the course of the offer may produce prejudice; and [2] where evidence central to the action is of questionable admissibility, and the parties will benefit in their preparation and presentation of the case from an advance ruling on admissibility.

D. CRAIG LEWIS, IDAHO TRIAL HANDBOOK § 3.2 (2d ed. 2005) (citing *Davidson v. Beco Corp.*, 112 Idaho 560, 733 P.2d 781 (Ct. App. 1986), *aff'd*, 114 Idaho 107, 753 P.2d 1253).

Motions in limine are “fraught with problems because they are necessarily based upon an alleged set of facts rather than the actual testimony which the trial court would have before it at trial in order to make its ruling.” *State v. Hester*, 114 Idaho 688, 700, 760 P.2d 27, 39 (1988). The trial judge “may defer his ruling until the case unfolds and there is a better record upon which to make his decision.” *Id.*; D. CRAIG LEWIS, IDAHO TRIAL HANDBOOK § 3.2 (1995).

ARGUMENT

An advance ruling on this evidence is not necessary or appropriate. The jury should be allowed to determine the extent of Printcraft’s damages. Rule 1006 regarding summary documents does not require that a formal notice be sent. Rather, the rule provides that, “The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for

examination or copying, or both, by other parties *at a reasonable time and place.*” Idaho R. Evid. 1006 (emphasis added). All of the backing documents were made available or produced before exhibits became due. There is no prejudice to Sunnyside. Since Sunnyside is challenging the summary documents, there can be no question Sunnyside had notice of the summary documents. Thus, all of Sunnyside’s arguments regarding failure to give notice are without merit and are not further addressed in this brief.

I. THE FLOORING EXPENSE IS PART OF PRINTCRAFT’S LEASE PAYMENT.

Printcraft, through the testimony of Travis Waters, made it absolutely clear what damages it is seeking with regards to floor expense. The following exchange from Printcraft’s third 30(b)(6) deposition demonstrates:

Q. [Referring to previous deposition] . . . Is Printcraft seeking payment for expenses incurred after it finished moving into the building on February 15, 2006, with regards to moving expenses.

A. Yes. There’s some epoxy in there that occurred after that was part of the moving expense. And there’s some increase in rents that Printcraft is paying that – I don’t know if those are considered a moving expense, but they’re – the floor system in the building had to be upgraded to accommodate Printcraft to a three-hour fire floor because we wanted to manufacture instead of have office space underneath office space. The building was initially designed with a TGI wood floor system. Because of that change, Printcraft received an increase in rent for the course of the time that they’ll be in that building. So those fees we’d also like – we’d like to recoup those.

Q. How much of an increase was Printcraft being paid for rent?

A. Printcraft wasn’t being paid for rent.

Q. You said it received an increase in rent?

A. It received an increase in the rent that it would pay.

Q. How much was it obligated to pay in addition as a result of the flooring system you just described?

A. I haven’t penciled that out, but, if I remember right, it’s around \$600.

420

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Q. Per month?

A. Yes.

Q. Is there any documentation that supports that modification?

A. The documentation would probably be the rent that we were supposed to pay and minus the rent that we actually ended up owing, the difference between those two.

Q. So has Printcraft not been paying that additional \$600?

A. No. They have.

Q. They have been paying it. What is the rent amount now with the alleged increase?

A. Our last rent check was for \$8,663.75.

Q. When was that paid?

A. 1-1-2008.

(Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, 507:23-510:2.) Waters later testified:

Q. Can you explain for me how the floor system relates to moving expense?

A. When Printcraft committed to move, it told CTR Development that it wanted to have a two-story facility, offices in the top, production in the bottom. The prints were all drawn up for a wood floor system. The county said that we couldn't do that by – we couldn't put production equipment underneath the offices if they were going to have a wood system because it had to have a three-hour fire suppression time. So at that point we were committed to move and CTR Development basically said that the rent was going – the cost of the building was going to go up, therefore, the rent was going to go up, and so if we hadn't have moved, we wouldn't have had these expenses.

(Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, 520:2-18.) Waters, on behalf of Printcraft plainly testified regarding the floor expense. Printcraft's lease payments increased \$600/month because of the additional expense for the floor.

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This Court has already determined: “A jury will determine the nature of Printcraft’s lease agreement, and what damages if any arise from the lease.” (Mem. Dec. and Order, January 15, 2009, p. 5.) The summary document regarding the flooring expense is admissible to substantiate the increased lease payment. All of the backing documents have been produced and Printcraft has clearly testified regarding the justification for this expense. There is no prejudice or potential prejudice to Sunnyside. Thus, Sunnyside’s motion in limine regarding the flooring expense should be denied.

II. PRINTCRAFT’S EMPLOYEE EXPENSE SUMMARY HAS BEEN EXPLAINED AND SUBSTANTIATED.

Travis Waters clearly testified regarding the employee expense component of the moving expenses at the third 30(b)(6) deposition of Printcraft. He testified as follows:

Q. I’m handing you what’s been marked as Exhibit 040. That is a document, again, that we just received today. Can you identify for me what that is?

A. This is a spreadsheet that once I started working through these, I realized that there was no labor included in those moving expenses. This is representative of the wages that it took each department to move. Instead of us going out and hiring a high dollar moving company from Salt Lake or Denver to move a graphics arts facility, basically each department was involved in moving themselves. So me and our general manager, Terry Luzier, assisted each department in breaking down, packing, rigging, doing whatever needed to be done, facilitated the move to the new building, and then the unpacking, unrigging, and setup in each department. So each department had about two weeks that they were moving. This shows the flexo department for two weeks; litho department, two weeks; bindery. The administrative folks assisted in all the other departments moving. The contract labor was a gentleman from the work center – convicts from the work center that we paid to –

(Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, 510:10-511:10.) Travis Waters further explained that he asked Printcraft employee Dianne McFarland to put data from Quickbooks onto a spreadsheet. (Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, 511:10-517:22.) Although Waters did not perform the calculations himself, he never testified he did not have personal knowledge regarding the spreadsheet

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as suggested by Sunnyside. (*See id.*) Waters explained the spreadsheet and answered numerous questions regarding its contents. (*Id.*)

Sunnyside states that “No supplemental response to Request No. 23 has been filed by Printcraft. No identification of the employee moving expense documents which Printcraft seeks to present in this summary has been submitted in response to discovery requests.” (Defs.’ Br. at 10.) Such a statement is false. Printcraft supplemented Request No. 23 on January 16, 2009, shortly after the Court’s order regarding damages. (Aff. Counsel Ex. B.) Printcraft produced the labor moving expense spreadsheet in response to the amended duces tecum and it was made an exhibit to the deposition. (Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, Ex. 40.) Sunnyside’s long and drawn out argument regarding its efforts to obtain documents in this case is misleading. Printcraft has produced hundreds if not thousands of documents in this case. Printcraft has liberally responded to discovery requests and Sunnyside has not been forced to file motions to compel to get the discovery documentation. Printcraft allowed the 30(b)(6) deposition to be continued to allow Sunnyside to further inquire regarding damages.

Counsel for Printcraft made it absolutely clear that Printcraft was willing to produce backing documents to the labor expense spreadsheet. The exchange went as follows:

Q. Have you provided your attorney with any documents that support this summary, Exhibit No. 40, or does this document stand alone?

MR. GAFFNEY: *If you want all the backing documents for this, you can have them.*

(Aff. Counsel Ex. A, Waters 30(b)(6) Depo. January 16, 2009, 517:17-22 (emphasis added).) Counsel for Sunnyside did not follow this up with a request for

supplementation, file a motion to compel, or otherwise indicate he wanted the documents.

Rather, he waited for the discovery cutoff to pass and filed the present motion. Rule 1006 only requires that the backing documents be made available for examination at a reasonable time and place. Counsel for Printcraft clearly made the documents available during the deposition and complied with this rule before the discovery deadline passed.¹

Even though it was not technically required to do so, within two days of receiving the present motion (and less than a month after the deposition) Printcraft supplemented its responses yet again to include the Quick Books printouts and an updated spreadsheet. (Aff. of Counsel Ex. C.) There is no prejudice to Sunnyside here.² Further, there is no substantive or procedural basis to exclude the documentation. Thus, Sunnyside's motion in limine should be denied as to the labor expense spreadsheet.

III. PRINTCRAFT HAS DOCUMENTED ITS MOVING EXPENSES.

Printcraft is entitled to put on evidence regarding moving expenses. At the third 30(b)(6) deposition Printcraft did eliminate a portion of its claim for moving expenses.

The problem with Sunnyside motion in limine regarding potential exhibits before exhibits are actually due is made manifest here. Printcraft has no intention of introducing a

¹ This recent motion is indicative of how Sunnyside's counsel has treated discovery in this matter. When Sunnyside (rightly or wrongly) has claimed document production deficiencies, Printcraft's counsel has on each occasion offered to and ultimately supplemented production. Sunnyside's counsel, however, rather than attempting to work with opposing counsel in getting the information exchanged has on each of these occasions reacted by claiming discovery abuse and filing or threatening to file motions for sanctions, motions to compel, motions in limine, etc. One particular instance is telling and has been previously addressed in briefing. At the second session of Printcraft's 30(b)(6) deposition taken December 22, 2008, Travis Waters had not completely familiarized himself with a number of documents supporting Printcraft's moving expense claim. Printcraft's counsel realizing that he had misinterpreted the notice duces tecum in preparing Mr. Waters, offered on the record to provide a detailed spreadsheet related to the expenses. Sunnyside's counsel twice, again on the record, agreed that he would wait to review the supplementation before re-noticing the deposition and that the supplementation might obviate the need for a further deposition. (Aff. Counsel Ex. H, Waters Dep. December 22, 2008, 389:9-393:11; 491:13-492:17.) Despite these representations, Sunnyside's counsel re-noticed the deposition *the very next day* by letter, completely ignoring the exchange that had taken place less than 18 hours earlier and further accusing Printcraft of "failing to appear" at the 30(b)(6) deposition. The usual litany of threatened allegations of discovery abuses, threats of sanctions, consequences, and so on peppered this missive. It is almost as if Sunnyside's counsel had developed selective amnesia regarding a conversation that occurred only hours earlier.

² Although Printcraft does not think it is necessary, if Sunnyside would like to depose Dianne McFarland, Travis Water's assistant, in advance of trial it is welcome to do so.

document that contains damages it is not seeking. Printcraft has amended its moving expense summary based on the January 16, 2009 deposition and that document is attached to the Affidavit of Counsel filed with this brief. (Aff. of Counsel Ex. D.)

Sunnyside argues that Printcraft should be excluded from putting on any evidence regarding any expenses it has not paid. Such an argument is nonsensical. Printcraft only needs to demonstrate that it is required to pay the invoices. Further, the documentation produced contains proof of payment as Travis Waters testified during the third 30(6)(6) deposition. There is no basis to exclude testimony or documentation regarding moving expenses.³

IV. EVIDENCE REGARDING THE SIGN OUTSIDE THE SUBDIVISION IS ADMISSIBLE.

The existence of the sign is not a new factual allegation made in this case. Travis Waters' first affidavit in opposition to summary judgment filed August 2, 2007, makes reference to the sign. (Waters Aff. August 2, 2007, ¶ 16.) The affidavit of Travis Waters regarding constructive fraud references the sign. (Waters Aff. December 5, 2007, ¶ 4.) Both of these affidavits predate the Court's September 2008 order. The whole point of pleading is to put opposing parties on notice of the claims being brought. Here, based on the affidavits Sunnyside was on notice with factual particularity with regards to the sign outside the subdivision was as of August 2, 2007. Despite the Court's September 2008 order, Printcraft was affirmatively making this allegation as of August 2, 2007.

However, the sign is probative on two other important issues raised recently in the December 2008 deposition of Doyle Beck and the defendants' collective motion to

³ This is akin to a plaintiff in a personal injury lawsuit who has incurred medical expenses as a result of a defendant's negligence, but has not yet paid the bills, typically as a result of the defendant's conduct which has rendered them unable to meet their financial obligations. Counsel is unaware of any rule that would bar such a claim for damages.

reconsider. First, the sign is probative as to Beck's credibility, which, in a fraud case is directly relevant to a propensity to lie, whether affirmatively or by omission, even under oath.

Second, the sign is probative as to the defendants' suggestion that Printcraft did not act with reasonable diligence by searching various "public records" as to the septic system before it moved into the subdivision. The sign is evidence of the level of notice Printcraft received regarding *what type* of sewage disposal existed in the subdivision. The sign strongly supports Printcraft's position that it was never on notice that it would be connecting to a septic system because the sign explicitly notifies potential owners or occupants that the subdivision has "sewer" service, not septic service. The distinction is critical because there is no permitting process for a central sewer system, thus no reason to search for such a permit. The sign carries the verbiage: "Sunnyside Industrial and Professional Park", "Water", "*Sewer*", "Intermountain Gas", and "County Taxes". (Aff. Counsel Ex. E, Miskin Dep. Ex. 9; Waters Aff. August 2, 2007, ¶ 16; Waters Aff. December 5, 2007, ¶ 4, (emphasis added).) As noted below, Mark Miskin authenticated the sign during his deposition.⁴ (Aff. Counsel Ex. E, Miskin Dep. 52:12-54:2 and Exhibit 9.) Any suggestions that the sign would be prejudicial are substantially outweighed by Printcraft's need to respond to the due diligence argument.

The facsimile of the sign was recently obtained by Printcraft.⁵ As soon as it was provided it was authenticated and attached to the deposition of Mark Miskin. Printcraft made efforts to gain information regarding the sign through discovery. Kirk Woolf

⁴ Travis Waters and Kirk Woolf can also authenticate the sign at trial.

⁵ Printcraft simply called and requested a copy of the facsimile from the sign maker, Sign Pro. It is ironic that Sunnyside has gone to such great lengths to exclude "illegally" obtained evidence, but utterly failed to disclose the source of its signage.

acknowledged existence of a sign outside the subdivision but claimed he could not remember its contents and claimed the sign was burned. Woolf further refused to disclose the identity of the alleged sign burner during his deposition. (Aff. Counsel Ex. F, Woolf Dep. 60:24-68:12.) Doyle Beck simply lied about the existence of the sign by testifying, "We've never had a sign advertising the subdivision." (Aff. Counsel Ex. G, Beck Dep. December 3, 2008, 54:16-55:9.) The existence of the sign facsimile and the testimony of Mark Miskin directly refute Doyle Beck's testimony.⁶

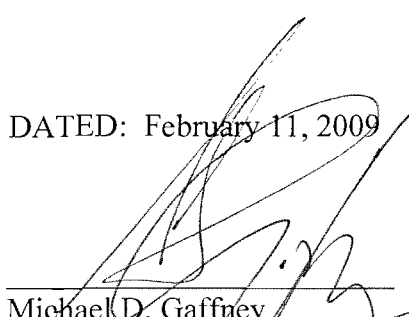
Sunnyside is asserting that Printcraft should have discovered the septic system inadequacies before coming into the subdivision. However, based in part on the sign inside the subdivision prominently advertising "sewer", it is reasonable to infer that Printcraft was not on notice that it would be hooking up to a septic system. Evidence of the sign is relevant and probative of Printcraft's due diligence before coming into the subdivision. Evidence of the sign directly contravenes Sunnyside's testimony that Printcraft should have discovered the issues regarding the sewer before coming into the subdivision. There is no risk of confusion or any prejudice to Sunnyside if evidence of the sign is admitted. Thus, Printcraft should be allowed to put on evidence of the sign at trial.

CONCLUSION

Based on the foregoing, Printcraft respectfully requests that Sunnyside's motion in limine re: summary documents and evidence of the sign be denied.

⁶ If nothing else, the sign should be allowed as impeachment evidence. Idaho R. Civ. Pro. 32 (a)(2) allows the unlimited use of a party opponent's deposition at trial, including using the deposition in conjunction with other evidence to demonstrate that the party has lied under oath during the deposition. 1229

DATED: February 11, 2009



Michael D. Gaffney
Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for Printcraft Press, Inc.

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on February 11, 2009, I served a true and correct copy of the PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE RE: EXCLUSION OF PRINTRCRAFT SUMMARY DOCUMENTS AND DRAWING OF DEVELOPER'S SIGN on the following by the method of delivery designated below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
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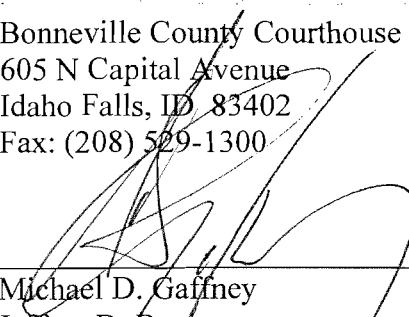
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2009 FEB 17 AM 9:30

CLERK OF DISTRICT COURT
BONNEVILLE COUNTY

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

SUPPLEMENTAL AFFIDAVIT IN
OPPOSITION TO DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE
SUMMARIES AND SIGN

STATE OF IDAHO

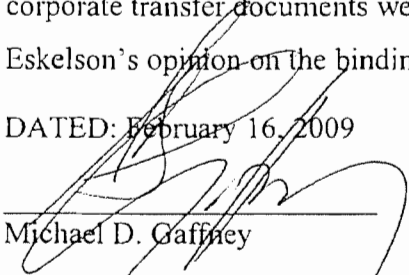
County of Bonneville

ss.

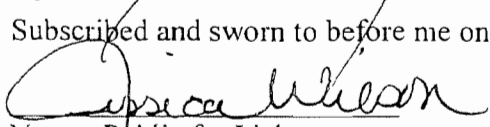
Michael D. Gaffney, having been duly sworn on oath, deposes and states:

1. I am an attorney with the law firm Beard St. Clair Gaffney PA, counsel for the plaintiffs in the above entitled action.
2. I am competent to testify and do so from personal knowledge.
3. This affidavit is submitted in response to the defendant Sunnyside's recent assertion on page 7 of its Reply in Support of Motion in Limine to Exclude Summaries and Sign (filed February 13, 2009) that Bates documents 00095 – 000146 represent an attempt to "retroactively complete the stock transfer not performed in 2000" which Sunnyside claims "are a clear attempt by Printcraft to modify its net worth and to create debt where none previously existed."
4. Attached as Exhibit A is a true and correct copy of a letter I received from Scott Eskelson, counsel for Gary and Linda Waters, wherein the reasons why the relevant corporate transfer documents were not originally signed is set forth and gives Mr. Eskelson's opinion on the binding effect of the transaction.

DATED: February 16, 2009


Michael D. Gaffney

Subscribed and sworn to before me on this 16th day of February, 2009.


Notary Public for Idaho
Residing at: Idaho Falls, ID
My Commission Expires: 9/11/2014



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on February 16, 2009, I served a true and correct copy of the SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE TO EXCLUDE SUMMARIES AND SIGN on the following by the method of delivery designated below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: (208) 524-7167

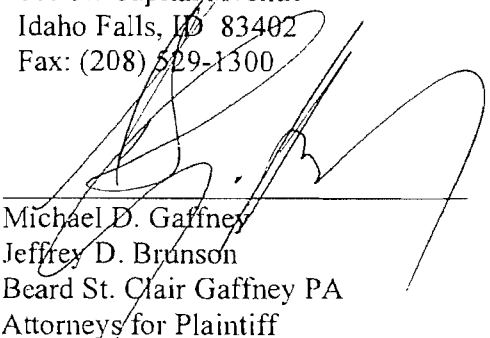
☐ U.S. Mail ☐ Hand-delivered ☒ Facsimile

Bryan D. Smith
Smith, Driscoll & Associates
PO Box 50731
Idaho Falls, ID 83405-0731
Fax: (208) 529-4166

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Bonneville County Courthouse
605 N. Capital Avenue
Idaho Falls, ID 83402
Fax: (208) 529-1300

☐ U.S. Mail ☐ Hand-delivered ☒ Facsimile



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Stephen E. Martin, E-mail: stephen@martineskelson.com
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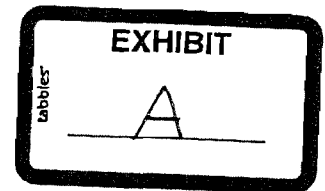
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January 13, 2009

Michael D. Gaffney
Beard, St. Clair, Gaffney, PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

Re: Waters Transaction



Dear Mike:

I am including with this letter a copy of a proposed letter to Laurie Rierison, Idaho Title and Trust, Inc. I am also including the documents described in that cover letter. The concept is to execute those documents as outlined therein, and then those documents, and the accompanying cover letter, would be sent to Idaho Title.

I will also enclose for your reference copies of the following:

1. Copy of the Escrow Instructions and the Stock Purchase and Sale Agreement dated January 1, 2007.
2. Copy of Stephen's letter to Randall Budge dated April 24, 2000.

Evidently, attorneys for each side of the transaction anticipated that the other party would forward the necessary stock certificates to Idaho Title along with a stock pledge agreement. However, this was not accomplished. Under the terms of paragraph 2.4 of the Stock Purchase Agreement, a further security agreement is clearly commentated. In my experience, while the language of that agreement is very brief, that does construe a security agreement which would be sufficient to constitute the grant of a security interest and is in line with Idaho Uniform Commercial Code. In reality, the execution of the Stock Pledge Agreement then ties in the terms of the pledge. I clearly believe that under the

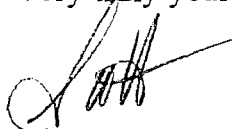
January 13, 2009

Page 2

terms of Stock Purchase and Sale Agreement, that the sellers would have a contractual right to require that the security agreement be executed.

I look forward to hearing from you.

Very truly yours,



Scott P. Eskelson

SPE/lm

Enclosures

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CLERK OF DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

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Attorneys for the Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

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OWNERS ASSOCIATION, INC., an
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INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S RESPONSE TO MOTION
IN LIMINE TO EXCLUDE WRITTEN
LEASES AND TESTIMONY RE:
WRITTEN LEASE AGREEMENTS

The plaintiff, Printcraft Press, Inc. (Printcraft), through counsel of record, Beard
St. Clair Gaffney PA, respectfully submit this response to the defendants' Motion in

ORIGINAL

51236

Limine to Exclude Written Leases and Testimony Regarding Written Lease Agreements.

A contemporaneously submitted affidavit of counsel supports this memorandum.

INTRODUCTION

The defendants' current motion in limine pertaining to the lease agreements between CTR Management, LLC and Printcraft borders on the impertinent. Notwithstanding the fact that it is virtually impossible to determine whether the motion seeks merely to exclude the written leases between the parties or all evidence of the leases, oral or written between the parties or whether the lease is oral or written, it fundamentally does not matter because it is uncontroverted that a lease agreement exists between the parties. The only issue for trial, as the court has ruled, is the nature and terms of the lease.

It is axiomatic that oral lease agreements are just as enforceable as written lease agreements. Even if the Court were to grant the defendants' motion, Printcraft is entitled to present testimony about the nature, duration, and various elements of the oral lease independent of the signed written lease documents. Printcraft is entitled to present testimony at trial that it is required to pay \$1.08 million in rent over the life of lease. Printcraft is also entitled (and in fact required) to present testimony as to the discounted value of the lease payments as the compensable amount due for prospective rent payments, i.e., the information contained in David Smith's supplemental report. The exclusion of the written documents changes nothing because the defendants have always been on notice that Printcraft would seek damages for the life of the lease at trial.

That being said, there is nothing compelling in the arguments and selective facts presented by the defendants that would lead to the conclusion that the written leases are not admissible in addition to oral testimony regarding the lease. The defendants

deliberately omit and distort facts relative to the disclosure of Printcraft's lease documents and associated damages in service of their continued strategy of presenting truncated facts to attempt to paint a picture of discovery run amok. In fact, Printcraft has been especially diligent in the presentation of rent damage claims and the defendants' protestations on this issue are not well taken.¹ One glaring omission, for example, is the fact that the defendants fail to disclose to the Court that the very information they claim has been "sprung on them by ambush" is contained in discovery responses that were served by Printcraft *over fifteen months* ago providing the very information they claim has been withheld. These discovery responses explicitly and unequivocally outline Printcraft's intent to seek damages over the life of the ten year lease. The responses not only present the factual basis for the claim but disclose the exact amount sought for lease damages. The only new information provided to the defendants recently is the discounting calculation. The Idaho Pattern Jury Instructions require that future damages be discounted to present value. The discount calculation must be performed *as close to trial as possible* to present an accurate picture of the present value of those damages to the jury. Even if David Smith had discounted the lease in October of 2007, that calculation would have had to be redone prior to trial to be accurate. There is absolutely nothing unique or tricky about this concept.

The defendants also disregard the Court's recent ruling that the terms of the lease and the damages flowing therefrom are fact questions for the jury to decide. Given the

¹ It seems the defense's sole strategy in this case is to claim that virtually every piece of information in this two year lawsuit provided by Printcraft was late and thus creates "profound" prejudice. One is reminded of Professor Craig Lewis' most entertaining observation about weak defense strategies: "Your honor, I object to the evidence presented because it tends to convict my client." The defenses' recent threat of seeking a continuance speaks volumes on this issue. Rather than hunkering down and actually putting together a creative defense to challenge Printcraft's evidence, particularly its experts on the merits, the defense has spent its days running down trivial trespass claims apparently to create prejudice against the plaintiffs.

Court's recent ruling on the lease issue, Printcraft is entirely within its rights to present the full scope of its damages case. As discussed, the defendants have been on notice of this particular damage claim for fifteen months and their attempt to feign prejudice should be summarily rejected.

LEGAL STANDARD

Even though the Court is more than familiar with the legal standard for motions in limine, Printcraft presents the following as an appropriate legal standard for reviewing such a motion to preserve the record.

A motion in limine seeks an advance ruling on the admissibility of evidence. *State v. Young*, 136 Idaho 113, 120, 29 P.3d 949, 956 (2001). The motion in limine is based upon an alleged set of facts rather than the actual testimony in order for the trial court to make its ruling and therefore is not a final order. *Id.* The trial court may reconsider the issue at any time, including when the actual presentation of facts is made. *Warren v. Sharp*, 139 Idaho 599, 605, 83 P.3d 773, 779 (2003). The decision to grant a motion in limine is a discretionary decision for the Court. *Id.*; *see also Viehweg v. Thompson*, 103 Idaho 265, 647 P.2d 311 (Ct. App. 1982).

The Idaho Supreme Court has commented that motions in limine are "fraught with problems because they are necessarily based upon an alleged set of facts rather than the actual testimony which the trial court would have before it at trial in order to make its ruling." *State v. Hester*, 114 Idaho 688, 760 P.2d 27 (1988). Trial courts can defer the ruling until the case unfolds and the evidence is offered in context. *Id.*

STATEMENT OF FACTS

1. On October 26, 2007, fifteen months ago, Printcraft responded to the defendants' discovery requests Interrogatories Nos. 11, 12, and 15. (Avondet Aff. Ex. A.)

2. Printcraft's response to Interrogatory No. 11 states:

INTERROGATORY NO. 11: Please describe in detail each contract Printcraft entered into as a result of any alleged non-disclosure identified in response to Interrogatories No. 8, 9, and 10.

Response: Plaintiff entered into a 10 year lease with CTR Management based upon the non-disclosures by defendants. Plaintiff also purchased a new \$500,000 printing press based upon use of a working sewer system.

(Id.)

3. Printcraft's response to Interrogatory No. 12 states:

INTERROGATORY NO. 12: Please describe in detail how any such alleged non-disclosure was material to Printcraft's decision to enter into each contract(s) identified in response to Interrogatory No. 11.

Objection: This request calls for a legal conclusion and information protected by the work product doctrine. This interrogatory clearly seeks legal analysis and not discoverable facts. Without waiving the objection, the plaintiff responds as follows. Plaintiff would not have entered into a 10 year lease nor would it have participated in the development of the property if it had known about the defects with the sewer system. It also would not have purchased a new printing press. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision.

(Id.)

4. The relevant portion of Printcraft's response to Interrogatory No 15 states:

INTERROGATORY NO. 15: Please describe in detail all damages you allege Printcraft suffered in occupying the building on Block 1, Lot 5 as a result of any alleged non-disclosure by SIPP.

Response: Plaintiff suffered approximately \$130,000 in damages as a result of moving into the building, *approximately \$1,080,000 in damages for rent* that will be owed to CTR Management, LLC over the course of ten years, and the cost and expenses of removing sewage from the property weekly...²

² These three components of damages are the very same damages asserted today. Despite the defendants' incessant protestations and claims that Printcraft's damages claims are a "moving target, the types of damages sought have never changed, with two exceptions noted *infra*. Nor have the amounts claimed changed, except for minor adjustments. The two exceptions are that Printcraft dropped its lost profits claim when counsel determined that it would be too expensive to adequately present that claim and a claim for annexation and connection to the City of Idaho Falls sewer was added once that option became available. Both of these supplementations took place months ago. The connection claim has been fully vetted in David Smith's reports and deposition.

(*Id.*, emphasis added)

5. The discovery responses were verified by Travis Waters.

6. On January 15, 2009, the Court noted:

The Parties also argue as to whether Printcraft's lease was month to month or for a period of ten years. The Court finds that there are disputed facts on this issue precluding summary judgment as a matter of law. A jury will need to determine *the nature of* Printcraft's lease agreement, and *what damages* if any arise from the lease.

(Mem. Dec. Order, January 14, 2009, emphasis added)

7. On January 16, 2009, Printcraft supplemented its discovery response to Request for Production No. 23, indicating that it would supplement David Smith's opinions with an appropriate discount rate and calculation. (Avondet Aff. Ex. B.)

8. Travis Waters (Waters) testified that Printcraft has committed to and intends to occupy the building for 10 years. (Avondet Aff. Ex. C, Waters Dep. 101:1-6, April 25, 2007.)

9. Unsigned copies of the lease agreement were produced to the defendants before the discovery deadline. (*See* Avondet Aff. Ex. D, CTR Management Dep., January 14, 2009.)

10. CTR Management LLC (CTRM), Printcraft's lessor, confirmed this ten year lease term. (*Id.* 19:1-10.) According to CTRM, the unsigned documents constitute CTRM's understanding of its relationship with Printcraft. (*Id.* 19:11-15.) The document referred to by CTRM memorializes a ten year lease commitment and forms the basis for CTRM's understanding of its relationship with Printcraft. (*Id.* Ex. 5.)

11. Printcraft did not receive copies of the lease documents from CTRM until January 13, 2009 (*Id.* 20:3-7) at the time CTRM was deposed pursuant to subpoena.

12. On December 22, 2008, the continued 30(b)(6) deposition of Printcraft took place. Waters testified at that deposition that Printcraft had a ten year commitment as a tenant in the building and that Printcraft would occupy the building so long as CTRM leased the building from J&LB Properties, Inc. (Avondet Aff. Ex. E, Waters Dep. Vol. II 405:13-406:16, December 22, 2008.) This testimony was confirmed by CTRM's production of the lease documents at the 30(b)(6) deposition of CTRM.

13. On January 16, 2009, Waters testified that given the January 14, 2009 decision, Printcraft would supplement its damages claim with a *discounted value* for the ten year lease damages. (Avondet Aff. Ex. F, Waters Dep. Vol. III 506:21-507:4, January 16, 2009.) As noted the undiscounted value had been provided months earlier in October of 2007. That amount has never been challenged or refuted despite three different 30(b)(6) depositions of Printcraft and a 30(b)(6) deposition of the lessor, CTRM.

14. Waters also testified on January 16, 2009 that Printcraft is seeking payment for the entire rent for the ten-year time period. (Avondet Aff. Ex. F, Waters Dep. Vol. III 521:9-12.)

15. The defendants asked Printcraft about its interrogatory responses in December 2008. (Avondet Aff. Ex. E, Waters Dep. Vol. II 404:1-413:25.)

16. Since the Court rendered its final pre-trial ruling on the lease claim on January 14, 2009, Printcraft immediately supplemented discovery informing the defendants that given the January 14, 2009 decision, Printcraft intended to supplement David M. Smith's expert witness opinion as to damages with a discounted value of the total rent owed over the duration of the lease. (Avondet Aff. Ex. B.)

17. Because of the incessant harping of defense counsel about the "unsigned lease", Printcraft's counsel advised Printcraft to simply sign the leases retroactively to resolve

the issue. The signed, written lease agreements were provided to the defendants on February 11, 2009. The signed documents are identical to the unsigned leases discussed in detail in the CTRM deposition.

18. Though the effective dates on the lease agreements are those identified in the lease documents, representatives from Printcraft and CTRM actually signed the lease documents in February 2009. (Waters Aff. ¶ 5; Wilde Aff. ¶ 5.)³

ARGUMENT

I. The lease documents were signed in February 2009 and have retroactive effect.

In an effort to fully disclose the circumstances of signing the lease documents, Printcraft has submitted affidavits from Waters and Lawry Wilde (Wilde). The affidavits establish that the signed lease documents that were produced were signed in February 2009. (See Waters Aff. & Wilde Aff.) Both Waters and Wilde signed on behalf of the respective entities. The effective dates of the lease documents go back to the dates identified in the respective agreements. Unsigned copies of the documents were produced to the defendants on January 14, 2009, attendant to CTRM's deposition in this case. The unsigned copies are identical to the signed copies in every respect except for the signatures of the parties. The defendants also learned on January 14, 2009, that CTRM considered the unsigned documents to fully describe the nature of Printcraft's relationship with CTRM. (Avondet Aff. Ex. D, CTR Management Dep. 19:11-15.) This statement by CTRM remains true; the lease documents simply memorialize the oral

³ It seems a bit peculiar that the defendants would want to exclude the executed lease agreements since it gives them an argument for recently "concocted" evidence. The defendants are perfectly free to make whatever issue out of this matter that they want at trial. If they want to make the argument that this is merely recently created evidence, they, again, are perfectly entitled to make that argument, as Printcraft is sure they will do with aplomb. However, the timing of the signed leases goes to the weight of the evidence and not admissibility.

agreements under which the parties had operated. Comparison of the signed documents and the unsigned documents verifies CTRM's statement. Most important, the signed leases are identical to the information supplied to the defendants in October of 2007, i.e. they are merely acknowledgments and ratifications of the lease agreement in effect since January 2006.

Thus, pursuant to Rule 26(e), Printcraft had a duty to supplement discovery with the lease agreements. The evidence is uncontroverted that until the time that the lease documents were actually signed, both Printcraft and CTRM consistently operated under oral agreements identical to the provisions of the written leases. Printcraft's initial discovery responses provided to the defendants that the documents did not exist were completely accurate. Once the facts changed, i.e., the written lease agreements were produced by CTRM, Printcraft seasonably supplemented with both the unsigned and the signed documents. Until the documents were signed, Printcraft had no duty to supplement because the discovery responses were accurate. Rule 26(e)(2)(B) provides that a party is under the obligation to supplement when "the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment." IDAHO R. CIV. P. 26(e)(2)(B) (2008). Contrary to the defendants' position, the rules of civil procedure Rule 26 does not require supplementation before the close of discovery, but rather contemplates supplementation at any time up to, and including, trial.. *See e.g. Luma Corp. v. Stryker Corp.*, 226 F.R.D. 536, 539 (S.D. W.Va 2005). Supplements to discovery are required any time new information comes to light. . *See Chimie v. PPG Indus., Inc.*, 303 F.Supp.2d 502, 507, n.11 (D. Del. 2004); *see also Johnson v. United Parcel Serv., Inc.*, 236 F.R.D. 376 (E.D. Tenn. 2006). Thus, despite the defendants'

arguments, the discovery deadline is not the date by which all supplementation must occur. Printcraft did precisely what it was required to do pursuant to the rules of procedure and it should not be punished for complying with the rules.

It is also important to note for the Court that the defendant's motion really makes no substantive difference as to the evidence that would be presented at trial even if the written lease agreements did not exist. The existence of an oral ten year lease will be discussed below. However, operating under the facts that a 10 year oral lease is asserted, which is a position readily supported by the evidence, Printcraft should be able to present its damages for the duration of that oral lease. Under those facts, Printcraft should be allowed to present evidence that over 10 years Printcraft would pay \$1.08 million in rent. The rental damages were disclosed in October 2007. Thus, nothing substantively changes even if the Court grants the defendants' motion insofar as what evidence Printcraft is entitled to submit at trial.⁴ The Court's most recent holding as to the damages Printcraft will be allowed to seek under its fraud theories includes damages for the duration of lease. (Mem. Dec. Order, January 14, 2009.) Thus, the defendant's motion should be denied.

II. There is no prejudice to the defendants.

As noted in the myriad prior motions and attendant hearings, counsel for the defendants overreacts to events in this case, attempts to create discovery disputes where none exist and seems to view the presentation of a case at trial in a distorted manner.⁵ It

⁴ The defendants, throughout this lawsuit take the incorrect view of the rules of evidence that every piece of oral testimony must be supported by a written document. Printcraft is uncertain why the defendants insist upon this view of the rules of evidence, but that view is patently incorrect. As with the lack of distinction between direct and circumstantial evidence, the law makes no distinction between oral testimony and documentary evidence.

is in that vein that their latest exercise in bombastic hyperbole is completely predictable.

However, it does nothing to assist the court and diminishes the judicial process.

The unsigned copies of the lease documents were provided to the defendants within the discovery period: January 14, 2009, to be exact. More importantly, the defendants were aware months ago that Printcraft asserted damages for a ten year lease. (Avondet Aff. Ex. A.) As discussed *supra* several discovery responses speak to the issue.⁶

Further, Waters has continually testified that Printcraft's lease commitment is for ten years. (See Avondet Aff. Ex. C, Waters Dep. 101:1-6.) The fact that the lease agreement is oral does not inherently make it a month to month lease. That is a characterization given to the oral lease by only defense counsel, for which he provides no legal authority. Moreover, Printcraft's assertion as to the duration of the lease is completely consistent with that of its landlord—thus there is no ambiguity in the lease. (Avondet Aff. Ex. D, CTR Management Dep. 19:11-15, Ex. 5.) Hence, the Court appropriately found that the nature of the lease agreement is a disputed issue of fact for the jury to reconcile at trial. (Mem. Dec. Order, January 14, 2009.)⁷

The defendants have also had notice for fifteen months that Printcraft intended to claim \$1,080,000 in damages for the ten year lease. This discovery response for Printcraft's lease claim was served fifteen months before the discovery cut-off. The only thing not disclosed was the discount rate used to bring the lease damages to their present value. However, that discount rate has been disclosed to the defendants in David M.

⁶ Counsel for the defendants continually refers to a response to a request for admission that purports to reference a month to month lease. (See *e.g.* Avondet Aff. Ex. G, David M. Smith Dep. 129:12-14, December 17, 2008.) However, no such response exists.

⁷ There is also a colorable argument that the parties operated pursuant to the unsigned written documents and did in fact have written agreements, even though they were unsigned. In this vein, the doctrine of part performance makes those agreements enforceable.

Smith's supplemental expert opinion. These future damages are to be discounted to their present cash value pursuant to the Idaho Jury Instructions. IDJI.2d 9.13. This is something that the defendants should have anticipated and had their expert calculate independent of whether the discount rate had been disclosed by Printcraft prior to trial. In fact the only issue, had the defendants' adequately anticipated this issue, as to the value of the lease would be whether the experts differed in their opinions as to the present value of the lease, i.e., do they justify different discount rates. Likely, given the extremely conservative rate use by Mr. Smith, it is doubtful that Mr. Bowles could credibly present a more robust discount rate. One of the peculiar things about litigation is that sometimes opposing experts actually agree on basic assumptions.

What this motion in limine truly represents is an attempt to remediate deficient trial preparation by defense counsel. In the defense's pursuit of tangential liability issues, they have forgotten the fundamentals of defending damages claims. The rent claims, and other future damage claims, such as storage and transport fees for waste, which have all been timely disclosed, are all subject to discounting. It is inexplicable why the defense's designated expert did not perform this simple task, having this number since October of 2007. As noted in the last in limine hearing in which Printcraft sought to exclude any testimony of the defendant's economic expert, Tyler Bowles, because the defendants have disclosed no substantive opinions and not even a simple reduction of the undiscounted rent figure known since October 2007. This deficiency is no better illustrated than the issue raised in this motion. Printcraft re-emphasizes that this type of damage claim is neither unique nor complicated. Assumedly, Mr. Bowles could run a discounted value in a matter of minutes to confirm or dispute Printcraft's figure. The

point is that the defense actually has to do it rather than creating discovery abuses that have not occurred as an excuse for its actual failure to do so.

Finally, in anticipation of the defense attempting to raise one more argument why Printcraft should be precluded from pursuing its lease damages claim, Printcraft wants to address the defendants' standing to even challenge the lease term. Implied in this anticipated attack is the statute of frauds. In fact, in this case, the statute of frauds does not apply to the lease. The statute of frauds is a statutory affirmative defense. *See* IDAHO CODE ANN. § 9-505 (2008). The statute provides that lease contracts for a term greater than one year or for the selling of real estate be in writing. *Id.* However, the Idaho Supreme Court has long recognized the exception of partial performance as to these contracts. *See Bauchman-Kingston P'ship, LP v. Haroldsen*, 2008 Ida. LEXIS 220, *11. Part performance is predicated on the existence of an agreement. *Bear Island Water Ass'n, Inc. v. Brown* 125 Idaho 717, 723, 874 P.2d 528, 534 (1994); *see also Deeds v. Stephens*, 8 Idaho 514, 69 P.534 (1902). Here, the parties have partially performed the ten year lease agreement well beyond a year. Printcraft moved its business into the building and CTRM has accepted rent. Additionally, both CTRM and Printcraft have acknowledged the existence of the ten year lease, despite the fact that the written lease was only recently executed. Neither party to the agreement disputes the agreement's term. Printcraft testified that it is entitled to occupy the building for 10 years (Avondet Aff. Ex. C, Waters Dep. 101:1-6.) The evidence supports that Printcraft intended to occupy the building for ten years from the move-in date. (*Id.* 104:11-23.) CTRM has provided testimony that the unsigned document, evidencing a ten year lease, is CTRM's understanding of its relationship to Printcraft. (Avondet Aff. Ex. D, CTR Management Dep. 19:11-15.) Since both parties to the agreement do not dispute the existence of the

agreement the defendants do not have standing to collaterally attack that agreement vis-à-vis the statute of frauds. *See Hoehner v. W. Cas. & Sur. Co.*, 8 Mich. App. 708, 714-15, 155 N.W.2d 231, 234-35 (1967).

The defendants mislead the Court in their briefing. The defendants argue that until February 11, 2009, it was undisputed that Printcraft occupied its current location under an oral month-to-month Lease Agreement. (Def. Mot. Limine at 4.) The defendant's statement clearly is not true. The discovery responses and Waters' own testimony in April 2007, December 2008, and January 2009, demonstrate that the lease may have been oral but that it is for ten years.⁸ In fact, in the very same 30(b)(6) deposition of Printcraft, Waters clarifies Printcraft's position as to the duration of the lease. Waters testifies Printcraft has a ten year commitment to be in the building under the terms of the lease. (Avondet Aff. Ex. E, Waters Dep. Vol. II., 405:13-406:16, December 22, 2008.) The written documents only memorialize the terms of the oral agreement. The fact that Printcraft has been able to acquire and sign the lease agreements is an issue that goes only to the evidentiary weight the signed documents will have at trial as opposed to the admissibility of the evidence.⁹ Regardless, Printcraft and CTRM now

⁸ Waters initially stated that although he believed the lease was perhaps month to month in the first installment of the 30(b)(6) deposition, he later clarified in that same deposition that the lease was for a ten year term. The defendants' insisted on continuing that deposition for two more sessions and Waters clarified in the two subsequent depositions (cited *supra*) that in fact the lease was for ten years in response to defense counsel's questions. These subsequent depositions are merely continuations of the original 30(b)(6) deposition because counsel clearly identifies it as such at the start of each subsequent deposition. (Avondet Aff. Ex. E, Waters Dep. Vol. II 234:4-10; Avondet Aff. Ex. F, Vol. III 498:23-25)

The testimony cited by the defendants that Printcraft was in the building on a month to month basis is also taken completely out of context. Waters is not an attorney and does not understand the legal implication of stating that Printcraft occupies a building on a month to month basis. Waters testified clearly that Printcraft was committed to be in the building for ten years.

Thus defense counsel only has himself to blame for the creation of this issue of fact as to the terms of the lease.

⁹ The defendants provide the court with a litany of citations to documents in the record. However, the significant majority of the citations only refer to an "oral sub-lease agreement." The references do not state that the sublease agreement was on a month-to-month basis. Indeed, this is consistent with the state of the

Plaintiff's Response to Motion in Limine to Exclude Written Leases and Testimony re: Written

have a signed, written lease agreement memorializing their business arrangement. Even if the Court excludes the lease documents that does not eliminate Printcraft's ability to present testimony about the amount of rent paid while the lease was oral or what amount would have been paid over the duration of the lease had the documents never been signed.

Another misleading statement by the defendants is the statement on page 8 of their briefing that the "defendants have been completely prevented from examining these spurious lease agreements during discovery and cannot now prepare for trial to oppose these claims in direct opposition to all previous discovery timely conducted by defendants." The defendants' statement is misleading for several reasons. First, the signed copies of the leases are identical to the unsigned copies of the documents produced within the discovery cut-off. Printcraft assumes that defense counsel can read the leases. There is nothing to examine other than the express language of the leases. Depositions will not aid this issue one wit. Second, the defendants' malapropism as to the word "spurious" connotes that leases are false or not what they purport to be. The evidence belies the defendants' argument. CTRM's testimony is that, at the very least, the unsigned documents memorialize CTRM's arrangement with Printcraft. (Avondet Aff. Ex. D, CTR Management Dep. 19:13-15.) Thus, the documents are what they purport to be and are not fake or false leases. They are not spurious. Third, the defendants' selective memory as to the discovery responses is convenient for their purposes; however, the defendants fail to disclose Printcraft's responses to Interrogatories Nos. 11, 12, 15, and Printcraft's supplemental response to Interrogatory No. 23, served

evidence until the signed documents were procured. Hence, those documents do, in fact, only memorialize the oral agreement between Printcraft and CTRM prior to the signing. There is nothing inconsistent about the evidence.

on January 16, 2009. Those are discovery responses, timely provided by Printcraft to the defendants for their edification and preparation for trial. Thus, the defendants' argument that they have been prejudiced is pure grandstanding and not based on the state of the record.

On January 14, 2009, the Court found that there are disputed issues of fact as to the terms of the lease agreement between CTRM and Printcraft. (Mem. Dec. Order, January 14, 2009.) The enforceability of the lease between CTRM and Printcraft does not rise or fall on the admissibility of (or even the existence of) the written lease, therefore it is unclear in what way admission of these documents prejudices the defendants. Importantly, as noted, Waters was deposed for a third time as Printcraft's 30(b)(6) representative on January 16, 2009. In that deposition, Waters confirmed what had already been disclosed to the defendants in October 2007 that given the Court's most recent ruling, Printcraft would in fact assert this damage claim for the full 10 year lease. (Avondet Aff. Ex. F, Waters Dep. Vol. III 506:21-507:4, January 16, 2009). (*Id.*) The defendants also never point out that on January 16, 2009, Printcraft disclosed that given the contents of the January 14, 2009 decision, that David M. Smith would prepare a supplemental opinion as to the amount of damages over the ten year lease. (Avondet Aff. Ex. B.) The discovery response even refers the defendants to the undiscounted value contained in Interrogatory No. 15. Thus, there is no prejudice to the defendants.

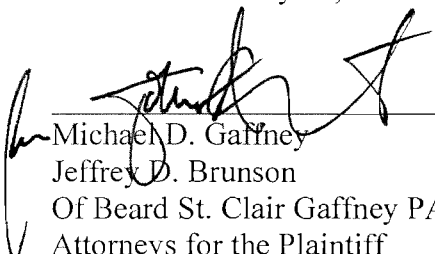
Finally, counsel for Printcraft placed the defendants on notice that Smith, Printcraft's damages expert, would perform the necessary analysis for damages over the life of the lease during Smith's deposition, even before the Court's ultimate ruling on the lease issue. The deposition was held in December 2008, prior to the Court's decision on January 14, 2009. Once the Court issued its decision, then Smith simply performed the

discounted analysis and his report was seasonably supplemented according to the Idaho Rules of Civil Procedure. *See* IDAHO R. CIV. P. 26(e)(1) (2008). As noted by Printcraft during the last in limine hearing, there is no time period specified for the duty to supplement. *See e.g. Luma Corp. v. Stryker Corp.*, 226 F.R.D. 536, 539 (S.D. W.Va 2005). Supplements to disclosures are only required at appropriate intervals. *See Chimie v. PPG Indus., Inc.*, 303 F.Supp.2d 502, 507, n.11 (D. Del. 2004); *see also Johnson v. United Parcel Serv., Inc.*, 236 F.R.D. 376 (E.D. Tenn. 2006). Thus, the discovery deadline is not the drop-dead date for supplementation under either the Idaho rules or the federal rules. The duty to seasonably supplement persists past the discovery deadline. Printcraft placed the defendants on notice that Smith would prepare a supplemental opinion. Printcraft also supplemented the lease documents as soon as they were signed. Printcraft has absolutely complied with its duty to seasonably supplement and that duty is all the rules, and this Court, should require.

CONCLUSION

As a result of the foregoing, the motion in limine should be denied.

DATED: February 20, 2009



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CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on February 20, 2009, I served a true and correct copy of the PLAINTIFF'S RESPONSE TO MOTION IN LIMINE TO EXCLUDE WRITTEN LEASES AND TESTIMONY RE: WRITTEN LEASE AGREEMENTS on the following by the method of delivery designated below:

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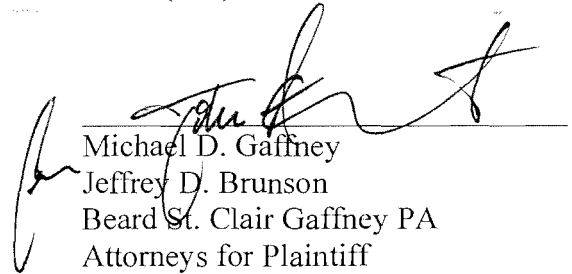
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